Tenants Lavv:

A

TREATISE

of great Use,

FOR

TENANTS and FARMERS

Of all Kinds,

And all other Persons whatsoever.

WHEREIN

The several natures, differences and kinds of Tenures and Tenants are discussed, and several Cases in the Law touching Leases, Rents, Distresses, Replevins, and other accidents between Landlord and Tenant, and Tenant and Tenant between themselves and others; Especially such who have suffered by the Late Conflagration in the City of *London*.

Flammâ Consumpta, Resurgo.

The Third Edition.

By *R. T.* Gent.

LONDON,

Printed for, and sold by *John Amery* at the *Peacock*, over against *Fetter-Lane* in *Fleet-Street*, 1674.

To the Tenants of ENGLAND.

I have often obſerved many inconveniences and Damages to happen to Tenants, oftentimes by their Ignorance and Timeroſity, not knowing how to defend themſelves againſt inſulting and cruel Landlords; *and oftentimes they commit many delinquencies to the* Landlord, *and treſpaſſes and* Nuſances *againſt one another unwittingly, not knowing when they offend; and moſt*

often they plung themſelves into the Mire, *and are inſnared in the* Net *of trouble, like a bird, by their over-much ſtriving to get themſelves free and at liberty from it, and intangle themſelves more and more, and work themſelves the farther and faſter in, till they beat themſelves out of breath, and break their Wings, and loſe ſo many Feathers, that they ſcarce ever get fluſh again, One cauſe hereof is; many delight to delude and flatter themſelves, by ſetting a fairer gloſs upon their cauſe then it will bear whe*

it comes to the Test, and to give wrong instructions to their Clerk or Attorney, whereby it cannot be rightly Stated to learned Counsil; and then what the Event of this will be, I leave to your selves to Judge.

I have taken the pains to compose this Treatise, to teach you to undeceive your selves, and not to seek refuge from the Law, in such cases when you your selves have done the injury: and likewise to shew you how you may ward your blows, and defend your selves against such as are injurious unto you, Malicious and Superbous.

I have methodized the particular Directions enacted for ending Controversies, between all Persons concerned in the late dreadful Fire of the City of London; *whereby they may with more ease, compose their own differences, and inform themselves of the Rules for new Building. I wish you much profit; which is all the design herein intended, by a Lover of his Country.*

R. T. Gen

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Tenants

Tenants Law.

CHAP. I.

A Division of the Several kinds of Tenants and Tenures.

The kinds of Tenants and Tenures.

Every Subject of this Kindom that occupieth any Lands, or inhabiteth in any House or Tenement, is said to be a Tenant, *Tenens a Tenendo*; because he must hold of some Lord or other.

And divers and various are the natures and kinds of Tenants and Tenures in this Land at this time; Although

though they have been more numerous, and indeed excessive slavery to the people, so that their exorbitant Cruelty hath caused their Dissolution.

Those which are ceased to be, are

Villenage. Tenure in *Villenage*, where the Lord might vassal and enslave his Tenants person at his pleasure, but not kill him.

Pilenage, where the Lord might

Pillenage. pillage his Tenant of all his goods.

Free Alms. Frank-Almoigne, or free Alms, was a Tenure begun and had its original, either at or soon after the foundation of *Monasteries* and Religious Houses, and extirpated with them. The nature of it in old time was, when a man being Seised of Lands or Tenements in his *Demesne* as of Fee, of the same Land did then feoff some Abbot or Prior and their Covents, or some Dean and Chapter and their Successors, or some Parson of a Church and his Successors, or any other Religious person who was in a Capacity to take such Alms, to hold the same Lands and Tenements to them and their Successors in *Liberam Eleemosynam*,

Free

Free-Alms, or *Frank Almoign*, of the grantor and his Heirs; and such as held in Free-Alms were bound in consideration of such grant or Feoffment, to perform certain Divine and Religious Services and Exercises, for the Souls good, Life and Prosperity of the grantors and all others.

And they confirmed all their grants with grievous *Anathema's* and imprecations against all such as should in any ways diminish or take away such their grant, or convert the same unto any other use, (which some justly believe to be none of the last Causes why Purchasers of Church-Lands find such ill success, seldom to enjoy it to the fourth generation.)

But, as I said before, this Tenure and the Religious Houses ended together, or immediately one after the other. So that none can grant any Lands or Tenements in *Libera Eleemosynam* at this day.

Tenure in Capite and Knight-Service is also by Act of Parliament in the twelfth Year of his now Majesties Reign, (together with the Court of

Knights-Service.

Wards which was dependant upon that Service, taken away, and all those Tenures are now turned into common *Soccage*.

So that the more usual Tenants amongst us at this day are,

Fee-Simple. Tenant in Fee-Simple, in Fee-Tail.

Fee Tail. Tenant in Tail, after possibility of issue extinct.

Dower, Courtesie, Term of life, for years. Tenant in Dower, by the courtesie of *England*; Tenant for Term of Life, for years upon Lease, in writing, or Lease parol.

At Will. Tenant at will, by the common Law, or by custom.

Copy. Tenant by Copy of Court-Roll.

Coparcenary. Tenants in Coparcenary, Joynt Tenants, and Tenants in common.

Fee-Simple.

Fee-Simple. A man that is seised in Lands or Tenements, to hold to him and his Heirs for ever, is said to be Tenant in Fee-Simple, and such an Estate is called *Feodum Simplex*. The word *Feodum* in Latine being taken to signifie Inheritance, and *Simplex* implies pure, plain, or unmixt:

indeed Fee-Simple is the most pure holding that is, being unmixt or entangled in it self. But as the whitest Colour will be sooneſt ſtained; ſo is this pure Tenure moſt ſubject to be ſpotted and involved in troubles above any other; Which the Law calls *Incombrances*.

If a man were to deal as purchaſer with a Tenant in Fee-ſimple, he hath a happy bargain if he meets with a Simple Tenure and a Simple Tenant; I mean, the one free from Incombrances, and the other from deceit; which many have found it a difficult thing to obtain. *Incombrances of Fee-Simple.*

I ſhall therefore by way of caution ſet down the Several troubles and incombrances this pure and Simple Tenure, called Fee-Simple, is ſubject unto.

Fee-Simple may be incombred, with ſeveral Judgements, Statutes Merchant and of the Staple. Recognizances, Mortgages, Wills, Pre-contracts, Bargains and Sailes, Feoffments, Fines, Amerciaments, Joyntures, Dowers, and many other fraudulent Conveyances, if a man have once poſſeſs it, and laſt of all,

all, may be quite forfeited for Treason.

But Fee-simple being free from any of the aforementioned incombrances, is the most free, absolute, and simple Estate of Inheritance that any man can have: And therefore a Tenant in Fee-simple, is said to be *Seisitus in Dominico suo, ut de feodo*; that is, seised in his Demesne as of Fee.

Tenant in Fee-Tail.

Fee-Tail. All Freehold Inheritances before the Statute of *Westminster* 2. Cap. were Fee-simple at the common Law: so that Tenant in tayl was inhituted by force of that Statute. By which Statute there is a twofold Tenant in Tayl, *viz.*

General and Special Tayl.

General Tail. He is said to be Tenant in general Tayl, who holdeth Lands or Tenements to him and to the Heirs of his body begotten.

For if in this case he Marry many Wives, and have issue by them all, every

every one of them may (the Elder dying) come to inherit this Land, because every one is the issue ingendred of his body.

It is the same case if Lands or Tenements be invested upon a Woman and the Heirs of her body, and she have several Husbands, and Children by them all, every one of them is in a possibility to inherit those Tenements, being all begotten of her body.

But where Lands or Tenements are settled upon a man and his Wife, and the Heirs of their bodies between them two lawfully to be begotten; this is Tenant in Special Tayl, because in this case none can inherit, but such Children as are by this man begotten upon the body of this wife named in the Grant: And if that wife dye, and the man taketh another wife, and hath issue of her body, the issue by the latter wife cannot inherit by vertue of such a grant; and if the first Husband dye, and the wife marry again and have issue by a second Husband, that issue cannot inherit. *Special Tail.*

There be several other Estates

in Special Tail, according to the Deviſes, Limitations, and Conditions invented and ſettled by the *Donor*; as ſometimes to a man and his Wife and the Heirs Males of their bodies between them two to be begotten; in this Caſe the Females cannot inherit.

Special tail with limitation.

So that if Lands be inveſted upon a man and his Heirs Males of his body, and he hath iſſue two Sons and dyeth, the eldeſt enters, according to the grant, and hath iſſue a Daughter and dyeth; this Daughter ſhall not inherit the Land, but the Brother, becauſe he is the Heir Male.

And if a man hath Lands granted to him, and to his Heirs Males of his body; and he hath no Son, but only a Daughter; and the Daughter hath a Son and dyeth, living her Father, and after that the *Donee* dyeth; in this caſe the *Donee* dying without iſſue Male in the Law, the Son of his Daughter, which is his Grandchild, ſhall not inherit, but the entayl is extinct, and the Land ſhall Revert to the *Donor*.

Tail Tenants Incombrances.

Theſe grants in Tail are the cauſe of much ſtrife, and ſtir up many charge-

chargeable suits, though in my judgment they are useless; for the intent of the *Donor* is seldom observed in them, he intending to preserve the Memory of his own name to perpetuity; which cannot be, since a Fine and Recovery will *docke* it.

Tenant in Tail after possibility of Issue extinct.

When Lands and Tenements be granted to a Man and his Wife in special Tail, and one of them dye before they have issue, the *Survivor* is Tenant in Tail after possibility of issue extinct; but if they have issue, during the life of the issue the *Survivor* cannot be said to be tenant in Tail after possibility of issue extinct. But if the issue dye without issue, and leave none to inherit by vertue of the entail, then the Surviving *Donee* is tenant in Tail after possibility of issue extinct. *Possibility of Issue extinct.*

And none can be tenant in Tail after possibility of issue extinct, but one of the *Donees* in special Tail; which tenant in Tail after possibility of issue extinct is not chargeable for *Donee in special Tail.*

committing of Waste, because the inheritance was once in him; but if he doth Alien in Fee, it is a forfeiture of his Estate, and the Heir in Reversion may enter.

Tenant by the Courtesie of England.

When a Man marries a Wife seisin Fee-simple, or in general Fee-Tail, or one that is Heiress unto Lands or Tenements in Special, and hath a Child by the same Wife male or Female born alive, and the Wife dyes, whether the Child be living or dead, the Husband shall hold the same Lands during his Life, as Tenant by the Courtesie of *England*, which is a Tenure used in none other Country but in *England*: And although the Child dye assoon as it is born, if it were but heard cry, the Husband shall hold the Lands after his Wifes decease during his Life as Tenant by the courtesie; the crying of the Child being a sufficient Testimony of its being born alive.

Tenant by the courtesie.

Tenant

Tenant in Dower.

Tenant in Dower.

This kind of Tenant is always of the Feminine gender, and is when a man who is seized of Lands or Tenements in Fee-simple, or in general Tail, or as Heir in Special Tail, marries a Wife and dies; the Wife after the death of her Husband, shall have during her life the third part of such Lands or Tenements as her Husband had during the Coverture, whether she had any issue by him or not, so she be above nine years of age at her Husbands death.

Dower at Common-Law.

This is the Dower at the Common-Law; but by custom in many places it is otherwise: for in some places she shall have the half, and in others the whole; and in all these cases she is Tenant in Dower.

Dower by the Custom.

In *Kent* it is the custom, for the Woman to have half her Husbands Lands *durante viduitate*, so long as she continues a Widow; but if she marry again she loses all; so likewise is the custom there, if a man marry a Wife having an Estate in Lands, &c. and she dye, without issue,

ſue, he ſhall have half while he remains ſole: but if he marry again he looſeth all. And in *Kent* they ſay, the reaſon thereof is, becauſe they do not love that their Lands ſhould help to maintain any Children but ſuch as are of their own getting; but how ſure they are hereof, *Ignoramus*.

Tenant for Life.

He that holdeth Lands or Tenements for the term of his own Life, or for term of the Life of any other perſon; In this caſe the Leſſee either for term of his own life, or for anothers, is Tenant for term of Life; And this Tenant for Life hath in him the Freehold, this being the loweſt degree of Freehold.

Leſſor and Leſſee. In a grant for term of Life, it is ſaid to be from Leſſor to Leſſee. Note, there is *Feoffer* and *Feoffee*, *Donor* and *Donee*, *Leſſor* and *Leſſee*: ſo there is likewiſe *Grantor* and *Grantee*, *Obligor* and *Obligee*, *Mortgagor* and *Mortgagee*.

Feoffer and Feoffee. He that enfeoffeth another in Lands or Tenements, is called the *Feoffer*,

Feoffer; he to whom the feoffment is made, is the *Feoffee*.

So when a man giveth Lands or Tenements to another in tail, he is called the *Donor*; and he to whom the gift is made is the *Donee*. *Donor and Donee.*

And likewise he that letteth to another any Lands or Tenements to hold for term of Life, for Years, or at Will, is called the Lessor; and he to whom the Lease is made, is called Lessee: which Lessee for Life (as said before) is tenant of Freehold. So also he that pawneth Lands to another is called Mortgagor, and he to whom it is pawned is called the Mortgagee. *Grantor and Grantee.* *Mortgagor and Mortgagee.*

Tenant for Years.

Tenant for term of Years, is when a man demiseth, and letteth any Lands or tenements to another to hold for a certain number of years agreed upon between the Lessor and the Lessee; by force and vertue of which Lease, the Lessee entreth into the said tenements. *Tenant for years.*

This Lease for term of years may be granted by word of mouth, and this;

this is called a Leaſe parol: which ſhall bind the Leſſor ſo long as the term is recorded for, if the Witneſſes live to prove the Leaſe Parol.

But the more ſafe and uſual way is to take a Leaſe by Deed indented which needs no other Execution but only ſealing and delivery. For by vertue of that Leaſe, the tenant may enter whenſoever he will.

Livery and Seiſin in Leaſe for Life.

But a Leaſe for term of Life muſt be executed by *Livery* and *Seiſin*, becauſe the freehold paſſeth with the Leaſe; which it cannot do without *Livery* and *Seiſin*.

This was the Caſe of *Alien* and *Waller* at the Lent-Aſſizes at *Maidſtone* 1654. *Waller* brought an Ejectione firme againſt *Allen*; the Defendant proved a Leaſe Parol at a certain Rent during his Life: which laſt word of the Defendants witneſs gave the verdict againſt him, becauſe none can be tenant for Life, without *Livery* and *Seiſin*.

Alſo if a man make a Leaſe to one for Years, the Remainder to another for Life, or in tail, or in Fee here the Leſſor ought to make *Livery*

and *Seisin* to the Lessee for Years, or else nothing shall pass to him in remainder, though the Lessee enter and enjoy his term of Years: but the Free-hold and the Reversion remains in the Lessor. But if the Lessor makes *Livery* and *Seisin* to the Lessee, then the Free-hold passes over to them in the Reversion, according to the grant.

Lease for Years takes right after the delivery.

Likewise if a man make a Lease of Lands or Tenements to another for term of Years, and the Lessor dye before the Lessee enter into the tenements: nevertheless he may enter, notwithstanding the death of the Lessor, because the Lessee hath right to the tenements by vertue of his Lease, immediately after the sealing and delivery of it.

Tenant at Will.

Tenant at Will.

When a man demises Lands to another to hold to the Lessee at the will of the Lessor, and by vertue of this Lease the Lessee is in possession; here the Lessee is tenant at Will, and hath no certain Estate in the tenements he holdeth, but the Lessor may eject him when he pleases.

But

But if the Leſſee ſow the Land, and the Leſſor eject him out afterward before the Corn be ripe, the Leſſee ſhall nevertheleſs have his Crop, and ſhall have free Egreſs and Regreſs to cut and carry it away, becauſe he knew not when the Leſſor would enter upon him.

He that ſows ſhall Reap if Tenant at Will.

But if a tenant for years ſow his Land ſo near the end of his term that his Leaſe expire before the Corn be ripe, he ſhall not come to reap it, but the Leſſor or other who hath the Reverſion ſhall have the Crop, becauſe the Leſſee knew certainly the end and determination of his term and Leaſe.

Not ſo in Tenants for years.

In like manner if a houſe be let to a man to hold at Will, and the Leſſee enters the Houſe, and bringeth thither his Goods and Houſhold-ſtuff, and afterwards the Leſſor ejects him out; here he ſhall have liberty of egreſs and regreſs, to fetch away his Houſhold-ſtuff.

Alſo if one ſeiſed in Fee-Simple, Fee-tail, or for term of Life, in a Houſe, and hath Goods in the Houſe, and makes his Will, appointing his Executors, and dies; now

wh

whosoever the house descends, the executors shall have liberty in some reasonable time to enter and carry away the goods.

And if a man by Deed of Feoffment grants certain Lands to another, and delivers him the Deed, but executes it not by *Livery* and *Seisin*; the *Feoffee* in this case may enter that Land, and hold it at the will of the *Feoffor*; but the *Feoffor* may eject him out again when he will.

Tenant at Will not bound to repairs.

If a man dwell in a House as tenant at will, he is not bound to repair the said house, as a tenant for term of years is bound to do.

But if a tenant at will shall commit voluntary waste, as to pull down houses, and Cut, Grub, Fell, or destroy Trees, the Lessor may bring his Action of trespass against him for so doing: and the Lessor upon a lease at Will, if he hath reserved a yearly rent, may either distreyn, or bring an Action of debt for the same, if it be in Arrear, which he pleases.

Tenants

Tenant by Copy of Court-Roll.

Tenant by Coppy of Court-Roll.

This is a very ancient tenure, and depends only upon cuſtom; and there are ſo many and various kinds of cuſtoms in Copy-holds in ſeveral Mannors and Countries, that it would take up a large Volume to diſcourſe of them all; which is not now our preſent Intention; but we ſhall refer that Subject to a further opportunity, and here ſhortly in general terms ſet forth the nature of a tenant by Copy of Court-Roll. It is a Mannor wherein there is a Cuſtom, and hath been ſo uſed time out of mind (for nothing can be a Cuſtom, unleſs it be *Tempore cujus non extat Memoria*, time out of mind,) that certain tenants within the ſaid Mannor, have uſed to have Lands or Tenements, to hold to them and their Heirs in Fee-ſimple or Fee-tail, or for term of life, or upon any other condition, at the Will of the Lord after the cuſtom of the ſame Mannor; ſuch tenants are called *Copy-holders*; that is, tenants by Copy of Court-Roll: for a Copy

Copy of the Court-Roll is all the evidence they have for their estates in the said Lands.

Copy holder cannot Alien by Deed.

Now a tenant by Copy of Court-Roll, may not alien his estate by Deed; for if he do, it is a forfeiture to the Lord, and the Lord may enter, and take the forfeit.

But if any tenant by Copy of Court-Roll, will alien his Lands, he may do it by a surrender into the hands of the Lord, to the use of him that shall have it; and any kind of Estate that a Free-holder can make of his Land by Deed, a *Copy-holder* may do the same by surrender.

The tenant by Copy of Court-Roll is also bound by the custom to repair his houses; and if he suffer any tenement or house to fall down for want of repair, or if he pull it down, he forfeits his Copy-hold to the Lord of the Mannor.

There

There are seven Properties incident for the Maintenance of a good Custom.

2 Ed. 4. 24. First, it must be reasonable.

13 Ed. 3. 4. Secondly, It must be certain.

42 Ed. 3. 4. Thirdly it must be according to Common Right.

Fourthly, it must be on good consideration.

5 H. 7 9. 42 Ed 3. Fifthly, it must be Compulsory.

3 H. 6 13. 31 Ed. 3. *Prescript.* 122. Sixthly, It must be without prejudice to the King.

Seventhly, it must be to his profit that claimeth the same.

In Customs there is User, Non user, Abuser, *and* Interuser.

User, Is when according to time and occasion a Custom is used.

Non user, Is when, for want of time and occasion, or through negligence, or forgetfulness, a custom is not used.

Abuser, is when Custom is ill used; for as User doth nourish Custom, so doth Abuser destroy a Custom.

Inter-

Interuser is in some cases, where a Custom may be used in one sort, and sometimes in another, and yet a good Custom, if there be good Considerations for the exchanging thereof at times.

Fine at the Lords will.

If the Lord have used at the Admission of his Copy-hold tenants sometimes to take for a Fine two pence, or sometimes four pence for an Acre, sometimes twelve pence an Acre; this User is so uncertain, that it makes the Fine Arbitrable at the Lords will.

Admission without Fine.

If the Lord of a Mannor have used time out of mind to admit his Copy-hold tenants without Fine, this Usage shall bind the Lord as well, as a Fine certain.

Work of Tenants.

If the Lord have used to have certain Work-days of his tenants; And that hath not been used by the space of Twenty years last past: yet that Non User is no discharge to the tenants, so that there be any alive that can remember the same.

Interuser for Rent.

If the tenants have used when they Sow their Lands to pay the Lord Rent-Corn, and when it lyeth in Pasture to pay their Rents in money, this is a good *Interuser*. *If*

Idem.

If the tenants have used to pa
their Lord every fourth year a dou
ble Rent, and every sixth year a
half Rent, this is a good Inter
ser.

Abuser by Cattel.

If the tenants have used to ha
Common of Pasture in their Lor
Woods for their Horse-cattel, an
they put in their Neat-cattel an
destroy the Woods, this is an abuser
But it is but fineable and no forfe
ture of the Common, no more th
if they have Common for a certa
number of Beasts in the Lords So
and they exceed the number; this
buse by the Surcharging, is on
fineable and no forfeiture.

Forfeiture.

If a man have a Fair to be us
two days, and he keeps it three da
this abuse is a forfeiture.

Customs must be reasonable.

Every good Custom is grounde
upon good Reason, and that shall
said in reason a good Custom, that
reason is a good Law; for Law an
Custom be of that affinity, as bo
do allow like Reason, and both
forbid like Inconveniences; An
the final effect of both is to discu
and to discern every mans true righ
and to give to every man that wh

his own; for although Custom in me cases differ from Law, and oth admit Execution of some Acts ithout some Ceremonies required the Law; yet the end and effect Custom is to maintain the like ason, and avoid the like inconveni-ces as the Law doth.

If the tenants of a Mannor will escribe to hold without paying any nts, or Services for their Copy-lds, this is no good Custom. But prescribe to hold by Fealty for all nner of Services is good and rea-nable.

If a Lord wil prescribe never to d a Court but when it pleaseth nself, this is not good; But to scribe never to hold a Court for special good of any one tenant, cept the same tenant will pay him a e for the same, that is good and sonable.

If a Copy-holder surrender his nd to the use of a Stranger, in con-ration that the same Stranger Marry his Daughter before a day, if the Marriage succeeds the Stranger takes no benefit by surrender. But if the surrender be

be in consideration that the Strang
shall pay *such a Sum* of money
such a day; though the money
not paid, yet the surrender stande
good. Many Customs there a
which at the beginning were volu
tary; and now by continuance
grown Compulsary: *Quæ in*
fuerunt voluntatis ex post facto f
runt necessitatis; Sayth the C
Law; which also in many C
doth agree with the Comm
Law.

Tenant in Coparcenery.

Tenants in Copercenery.

There are two kinds of tenant
Coparcenery; that is, *Parcener*
the Common Law, and *Parcener*
custom.

After the course of the Comm
Law, when a Man or Woman
seised in Lands or Tenements in F
Simple, or Fee-tail, and hath no
ther issue but Daughters, and dy
the tenements descend to the Da
ters equally as Co-heirs; and
shall enjoy every one an equal
thereof, as tenants in *Parcenery*,
Copartnership, and are all as it

one Heir to their Anceſtor; And theſe Coheirs or *Parceners* may have a Writ called *Breve de participatione facienda*, to have the Lands equally divided and ſhared amongſt them.

If a man ſeiſed of lands dye without iſſue, and the tenements deſcend to his *Siſters*, or if he hath no *Siſters*, and it deſcends to his Aunts: they be *Coheirs* or *Parceners* as aforeſaid.

If there be two *parceners*, one marries and hath iſſue and dieth, and afterwards her Husband holdeth one half, as tenant by the Courteſie; the Coheir or parcener that ſurviveth, and the tenant by the Courteſie, may make partition between them; And if the tenant by the Courteſie will not conſent thereunto, the ſurviving parcener may compel him by a writ *de participatione facienda*.

But if the tenant by the Courteſie deſires to have partition, and the parcener ſurviving will not agree to it; the tenant by the Courteſie can have no remedy: for he cannot have a writ *de participatione facienda*

against the surviving parcener, ...
though the parcener may have it ...
gainst him.

Parceners by Custom.

Parceners by Custom. This Tenure is Gavel-kind, and ...
used only in *Kent*, except in so...
certain places in *England* beside...
and in *North Wales*. But the m...
of *Kent* only claim this as a right ...
maining unto them unconquere...
and it is thus: If a man be seised ...
Fee-Simple or Fee-Tail in Lands ...
tenements of the Custom and Tenu...
of Gavel-kind, and hath issue div...
Sons and dyeth; All the Sons sh...
be *Coheirs*, and equally inherit the ...
Lands and tenements as Females ...
and may make partition by writ ...
Partitione inter faciendâ, and divi...
as in the case of Daughters at ...
common-Law.

Joynt-Tenants.

Joynt-Tenants. When a man being seised of ...
tain Lands and Tenements, do...
thereof enfeoff three or four, ...
more, to have and to hold to the ...

d their Heirs, or to hold to them-
ves, for the term of their lives, or
another life, and they become
ſed by virtue of that Feoff-
ent, theſe are ſaid to be Joynt-Te-
nts.

Likewiſe if two or more diſſeiſe *Diſſeiſors*
other of any Lands or Tenements,
their own uſe, the diſſeiſors be
ynt-Tenants, but if it be but to
uſe of one of them, they be not
ynt-Tenants.

Now the nature of Joynt-tenants
that the whole eſtate ſhall go to
Survivor.

As if there be Joynt-tenants in
Simple, and the one of them hath
e and dyeth, the two that Survive
ll have the whole Tenements, and
thing thereof ſhall go to the iſſue
him that is dead; And if the ſe-
d tenant have iſſue and dye, the
d who is the Survivor ſhall en- *Survivor.*
the whole, and ſhall have it in
Simple to him and his Heirs.

But now there is a difference in
ants in Parcenery: for if there be
Coparceners, and one hath iſſue
dyeth before there be any parti-
n made, that part which belonged

to her that is deceased, shall descend to her issue. And if such a Parcener dye without issue, her part shall descend to her *Coheirs*, so that they have by Discent, and not by Survivourship as Joynt-Tenants have.

Survivourship. And as the Survivourship taketh place amongst Joynt-tenants, so doth amongst all persons who have Joynt-Estate, or possession with others in Chattels Real or Personal. As if a Lease be made to several persons for term of years, the Survivor of the Lessees shall enjoy all the Tenements during the term by vertue of the Lease.

And in like manner Goods and Chattels personal, whereof the partners shall go to the Survivour. And if a Bond be made to many persons for one Debt, and some of the Obligees dye, the Survivour shall have all the Debt: And so it is of Covenants and Contracts made with Partners.

There may also be Joynt-tenants for term of life, and yet they have several Inheritances.

If Lands be given to two men to old to them for term of their lives, nd to the Heirs of their two bodies, ere these *Donees* are Joynt-tenants r term of their lives, and have se- eral Inheritances: For if one of hem have issue and dye, the Survi- our shall enjoy the whole during is life by Survivourship. And if the rvivour have also issue and dye, hen the issue of them both shall en- y the estate equally between them, tenants in common, and not oynt-tenants.

Several Inheritances.

Now the reason why these are id to have several Inheritances, because it is impossible for them have an Heir between them, a Man and Woman may ve.

Therefore the Law maketh this stinction according to reason and e form of the gift; that is, to the eirs that one getteth on the body his Wife; and so likewise of the her: so that by this reason it must necessity be, that they have several heritances.

And if after the death of the *Do- es*, the issue of one of the *Donees*

dye also, leaving no issue of his body Surviving, in this case the *Donor* or his Heirs may enter into the moyety of the Lands, as in his reversion, though the other of the *Donees* hath issue living.

In like manner if Lands be given to two Females and to the Heirs of one of them, in this case, the one of them, that is, she that hath it but for life, hath a Free-hold, and the other hath a Fee-Simple: and if she that hath the Fee dye, the other who hath the Free-hold shall enjoy the whole during her life by vertue of her Survivorship.

And if tenements be given to two and to the Heirs to be ingendred of the body of one of them, here the one hath Free-hold, and the other Fee-Tail.

If there be two Joynt-tenants, and they are seised of an Estate in Fee Simple, and the one by Deed grants a Rent-charge to another out of the part which appertains to him; now during the life of the grantor, the Rent-charge is good and effectual, but it becomes void after the death of the Grantor. For the tenant

Tenant that Surviveth shall hold all the Land by Survivourship, discharged from the Rent-charge of the other.

But amongst *Coheirs* or Parceners it is otherwise: for if there be two Parceners in Tenements in Fee-Simple, and before partition one chargeth his part by his deed with a Rent-charge, and dyeth leaving no issue, whereby his moyety descends to the other Partners; here that part shall not be freed of the Rent-charge; because he cometh to this moyety by discent as Heir at Law. *Difference between Coheirs and Copartners.*

If Joynt-tenants be desirous to make partition between them, they may do it by consent and agreement amongst themselves; and such partition is good and binding against each other: but unless it be done by mutual consent amongst themselves, the Law cannot enforce or compel them, or either of them to do it; because Joynt-Tenants cannot have a writ *de Participatione faciendâ*, as tenants in Copartnership may have.

If there be a joynt Estate of Lands and Tenements made to a man and

his wife, and to a third Person, here the third Person shall have as much as the man and his wife; that is, one moyety: for the man and wife can have but half the estate, because they are but one person in Law.

In like manner it is if Land were made to a man and his wife and to two others; here the man and wife can have but a third part and the two others the other two parts.

Tenants in Common.

Tenants in Common. Such as have Lands and Tenements by several title, and not joynt title, and none of them knowes what is several to him, whether it be in Fee-Simple, Fee-Tail, or for term of life; these are said to be tenants in Common, because they ought by the Law to hold, enjoy and occupy such Lands and Tenements in common and undivided, and to take the profits in common; and do come to the same Lands and Tenements by several titles, and not by one joynt title.

If a man enfeoff two Joynt-T[enants]

nants in Fee, and one of them *Aliens* his part to another in Fee; this *Alienee* and the other Joynt-tenant be Tenants in common, because they now ſtand ſeiſed by ſeveral titles; the one joynt-tenant by virtue of the firſt Feoffment made to him; and the other Joynt-tenant, and the *Alien* becomes ſeiſed in his moyety by vertue of the Feoffment of the other Joynt-tenant; ſo that the ſeveral feoffments make their titles ſeveral, whereby they become Tenants in common.

If there be three Joynt-tenants, and one of them *aliens* his part to another perſon in Fee, here the *alienee* is tenant in Common with the other two Joynt-tenants, and of the other two parts, the two Joynt-tenants be ſeiſed joyntly, and the Survivor of them ſhall have the whole of thoſe two parts by vertue of Survivourſhip.

If there be two Joynt-tenants in fee, and one of them gives his part to another in tail, here the *Donee*, and the other Joynt-tenant become tenants in Common.

Alſo if Lands be given to two men, and to the Heirs of their two

bodies, in this case these *Donees* have a Joynt-Estate during their lives; and if both of them have issue and dye, both their issue shall hold the Land as Tenants in Common.

If Lands be given to two men and their Heirs to hold to each a moyety, these are Tenants in Common.

If a man being seised in certain Lands doth enfeoff another in the half of it without limiting of the same half in severalty at the time of the Feoffment made; that is, do not distinguish that half from the other by particular bounds and limits; in this case the *Feoffer* and the *Feoffee* shall hold their parts of those Lands in Common.

Difference between Tenants for Life and in Common.

And as it is amongst Tenants in Common in Lands or Tenements in Fee-Simple or Fee-Tail, in the same nature it is also between tenants for term of life; as, if there be two Joynt-tenants seiz'd in Fee, and one of them lets to a man his part for term of his life, and the other Joynt-tenant lets to another man his part for term of life; these two Lessees be tenants

tenants in Common for the term of their lives.

Likewise if a man lets Lands unto two persons for the term of their lives, and the one of them grants all his Estate of the part belonging unto him unto a third person; then this third person to whom this grant is made, and the other Tenant for term of Life, be both tenants in Common, during the lives of both the Lessees.

If there be three Joynt-tenants, and one of them releaseth all his right which he hath in the Land by his Deed to one of his fellows, then he to whom the release is made, hath the third part of the Lands by vertue of that release, and shall hold that third part with himself and his fellow in Common, and they two shall hold the other two parts joyntly.

Also if a joynt-estate be made unto a man and his wife, and to a third person, and that third person releaseth his right which he hath in that estate to the Husband; then the Husband hath the third persons moyety, and the wife hath nothing therein at all.

And

And if such third person release his right in his moyety to the wife not naming her Husband in the release; then the Wife hath the third persons moyety, and the Husband hath nothing at all in it, but only *Jure uxoris*, in the right of his Wife: because the release shall work to invest the Estate in the person to whom the release is made, of all that appetrained to him that made such release.

Tenants in Common by Prescription.

There may be also Tenants in Common by title of Prescription: that is, when two have holden land Common undivided; the one, one half from his Ancestors; and the other, the other half from his Ancestors, or from whom the Estate is derived unto them undivided, time whereof the memory of man hath not known the contrary; these are Tenants in Common, by title of prescription.

Now these Tenants in Common ought in some cases to have for the maintenance of their possession several Actions; And in some cases they shall all joyn in one Action: for if there be two Tenants in Com-

mon

mon, and they be disseised, they two cannot bring against the disseisor one Assize in both their names, but they must have against him two Assizes: for every of them ought to have an Assize of his half, because the Tenants in Common are seised by several titles.

But amongst joynt-tenants it is otherwise, for if there be never so many of them, and they be disseised, they shall have but one Assize in all their names, because they have all but one joynt-title.

Tenants by divers Descents.

There is likewise a difference in suing real Actions between Partners that be in divers descents, and Tenants in Common. For if a man who is seised in Lands in Fee dieth, leaving only two Daughters his Coheirs, and these two Daughters enter, and have each of them a Son, and dye without making any partition between them, so that the Lands descend equally to their two Sons, the one moyety to one of them, and the other unto the other, and they enter, and enjoy the same in Common, and be disseised: they shall not in this case bring two Assizes, but one Assize:

ſize in both their names: for though they came in by divers diſcents, yet they be Parceners, and a writ *de Participatione facienda* lyeth between them. Nevertheleſs, they be not Parceners by reaſon of the ſeiſin and poſſeſſion which they have from their Mothers, but in reſpect to their Eſtate which deſcended to their Mothers from their Grand-father.

And ſo in reſpect and conſideration of their firſt deſcent that was to their Mothers, they have a title in Parcenery which maketh them Parceners, and they be but as one Heir to their common *Anceſtor* their Grandfather, from whom the Land deſcended to their Mothers. And therefore before partition made between them they ſhould have but one Aſſiſe though they came in by ſeveral diſcents.

And likewiſe in perſonal Action in Treſpaſs, and ſuch like caſes which concern their Tenements in Common, the Tenants in Common ought to bring ſuch perſonal Action jointly in all their names; as for breaking their Houſes, Cloſes, Paſtures

Pastures; wasting, treading down, or otherwise spoyling their Grass; cutting or felling of their Woods, spoiling their Fruit-trees, fishing in their Ponds, and such like. In these and all such kind of actions wherein they are joyntly concerned, the Tenants in Common shall have one joynt Action, and recover damages joyntly.

Likewise if two Tenants in Common make a Lease of their two Tenements to another for term of years, reserving unto themselves a certain yearly Rent, if the Rent be in Arrear, they shall have one Action of Debt for the Rent against the Lessee in both their names, and not divers Actions.

Tenants in Common by divers Titles.

If two persons or more, have Chattels real or personal in Common and by divers titles, if one of them dye, the other who Survive, shall not have his part that is dead in those Chattels by Survivorship, but the Executors of him that dieth shall hold and enjoy his part with them that Survive, as the Testator did or ought to have done in his life-time.

If two persons have an estate in com-

common for term of years, and one of them puts the other out of his poſſeſſion, and enjoys all himſelf; then he that is ſo put out of poſſeſſion, may bring his Ejectment againſt the other for his moyety.

But if two perſons be poſſeſſed of Chattels perſonal in Common by divers titles, as of an Horſe, or an Ox, or a Cow, or the like, and one of them takes it into his own poſſeſſion, from the other; now the other hath no remedy, but to take this from him that hath done him the injury again, to occupie in Common when he hath an opportunity; that is, in plain terms, he may come by it as well as he can.

CHA

CHAP. II.

Of Leaſes, Covenants and Conditions, Proviſo's and Reſervations, Surrenders and Aſſignments of Leaſes.

Leaſes and Covenants.

IN all Leaſes, as we have ſaid before in the title of *Tenant for term of Years*, there muſt be Leſſor and Leſſee: He which demiſes or lets Land to Farm, is the Leſſor; and he who takes the Land; that is, unto whom it is ſo let or demiſed, is called the Leſſee; in more vulgar terms underſtood by the Country Farmer by the title of *Landlord* and *Tenant*.

Firmor or Farmer, who it is.

According to our general and common acceptation now adays, every Leſſee for Life, Years, or at Will, though it be but of a Cottage, or never ſo ſmall a Tenement or Houſe, is called a Firmor or Farmer, and the premiſes a Firm or Farm; and ſo we ſay in the Writ, *A firma ſua Ejecit*; which may be the reaſon they are called Farms.

But

But anciently the chief Messuage in a Parish or Country Town, was called by way of preeminency by the name of a Farm; and unto this Farm belonged great Demeasnes of all sorts, as Gardens, Meadows, Pastures, Rivers, Woods, Moors, Waters, Marishes, Furzes, Heath, and also Messuages, Houses, Tofts, Mills, and the like: And all these are comprehended under the title of Lands. These *Demeasnes* were used to be let out to others for term of life, years, or at will.

Demeasnes.

These ancient Farms, (or Ferms which you will call them, which appellation or dialect differs according to the Country; In *Essex*, *Norfolk* and *Suffolk*, they call them Ferms and Fermors; but the West and be are called Farms and Farmors) the Farms, I say, attained to this title from the old *Saxon* word *Fermior* which signifies to feed, provide or yield Victuals; so that a Farmor signifies a Victualler; for anciently the Landlords did not receive money upon their Leases for their Rent but Corn and Victuals, being such

The name & nature is now altered.

as the Farm yielded of its growth; until it came by degrees into part Money and part Victuals; and at last, about the time of King *Henry* the first, the Rent reserved was turned into Money, and so hath hitherto continued amongst most men.

Ancient Rents.

Yet amongst some, where the ancient Rents or Reservations are not altered, the Rent is in Corn or Victuals to this day, especially in Colledge and Church-leases; and doubtless many of those ancient reservations received their utmost period in the general dissolution of the Religious Houses; to the no small detriment of the Industrious Farmer.

Co. 7. par. f. 33.

All Leases for years reserving Rent, must be made of Lands and Tenements, whereunto the Lessor may come to distreyn; so that a Rent cannot be reserved by a Common person out of any incorporeal inheritance, as advowsons, commons, Offices, Tythes, Fairs, Markets, Liberties, Franchises, and the like: but if a Lease be made by Deed in writing of one of them, one may have an

Co. 1. par. Inst. p. 47.

an Action of Debt by way of contract, but one cannot distreyn: but if any Rent be reserved in such cases upon a Lease for life, it is utterly void.

23 Lib. Ass. 6. Leases for term of years are Chattels, so that if a man have a Lease of Lands for five hundred years, it is a Chattel, and goes to his Executor or Administrator, if he dispose not otherwise of it before his death.

Every man who is seised of Land in Fee-Simple, may Lease out his Lands for what time or term he pleaseth himself; And so likewise might Bishops have done formerly, before the Statutes restraining them.

32 H. 7. C. 28. 13 El. C. 10. 18 El. C. 6. 1 Jac. C. 3. A Tenant in tail being at age may by Deed in writing Lease out such Lands as have been let to Farm twenty years next before the Lease made, reserving the old Rent or more, the Words *Without Impeachment of Wast* must be omitted in it, and it must commence from the date of the making, or date. And if there be an old Lease in being, it must be surrendred, expired or ended

Hern. law of Convei. pag. 67. 68.

ed within one year after the making of the new one, or else it is void. And a Lease thus made, binds the issue of the Tenant in tail, if he dye before the term be out: but if the Tenant in tail dye without issue, the *Donor* may avoid the Lease by his entry, and so may he in Remainder. And though he accept the Rent, yet he doth not thereby confirm the Lease.

A man that is seised in Lands in Fee-Simple or Fee-tail, in the right of his Wife, may make a Lease by Indenture in writing of his Wifes Land, in the name of himself and his Wife, and she to seal thereunto, reserving the Rent to himself and his Wife, and to the Heirs of his Wife; this Lease shall be good against the Woman and her Heirs after her death.

Bishops, Deans and Chapters observing the Rules aforesaid, may make Leases of such Estates as they are seised of in Fee in Right of their Churches: and so may Masters, Provosts, and Fellows of Colledges, and Wardens of Hospitals, if they be not prohibited by the

the private Statutes of their Founda-
tions.

But neither Tenant in tail nor any
of the persons before named, can le
for any longer term than thre
lives, or one and twenty years; bu
for what term under they pleas
But if they do not observe the
Rules in their demises, yet their Le
ses shall be good against them fo
their lives.

Cook. 8. Jac. 144. If a Lessee for years grant a Rent-charge, and after surrender, yet fo the benefit of the Grantee, the ter hath continuance; although in *Re veritate*, it is determined, and th Grantor himself shall not devoga from his own grant, to make it voi at his pleasure.

Idem. Tenant for years of an Advowso granteth the next Avoidance a Donation, if the same Church shou become void during the term, o And afterwards surrenders his ter yet if the next Avoidance be wit in the term, the grant is good, fo the years cannot determine, but b effluction of time, and the Law im plies a limitation, if the Church become void during the term; &

expre

expressa eorum quæ tacite insunt, nihil operatur.

A Lessee covenanteth for himself his Executors and Administrators, with the Lessor, That he his Executors or Assigns shall build a Brick-wall upon part of the demised premises, And afterwards the Lessee makes an assignment of his Lease to *D.* for his term; in this Case the Assignee is not bound to build the Wall. Idem. 25 Eliz. Fol. 16.

When a Covenant extends to a thing in being, parcel of the demise, then the thing to be done by force of the Covenant is annexed, and appurtenant to the thing demised, And shall bind the Assignee, although by express words in the Covenant he is not bound.

But if the Covenant extends to a thing which had no being, at the time of the demise made, that cannot be annexed or appurtenant to a thing which had no being.

If a Lessee Covenant to repair the houses demised to him, during his Lease, This is part of the Contract, and shall bind the Assignee although by the Covenant, he be not expresly bound.

But

But where the Covenant conce
a thing not in being, at the time
the demise, but to be made afte
this shall bind the Covenantor,
Executors and Administrators, b
not the Assignee.

If a Lessee Covenant for him a
his Assigns to build a House up
the Land of the Lessor, which is
parcel of the demise; or to pay
ny collateral sum of Money to
Lessor, or to a Stranger, this shall
bind the Assignee.

If a man demise Lands for ye
with a stock of Cattel or sum of
ney rendring Rent, And the Le
Couenants for him, his Execut
Administrators and Assigns, to
liver the stock of Cattel, or the
of Money at the end of the te
This Covenant shall not charg
Assignee.

If an Assignee of a Lessee b
victed he may have a writ of C
nant, so shall a Tenant by St
or by *Elegit*, or he to wh
Lease is sold by vertue of an Ex
tion.

If a man grant to a Lessee for t
of years, that he shall have so

Estovers as shall serve to repair his House, or that he shall burn in his House or the like, during the term; That is, appurtenant to the Land, and shall run with the same as a thing appurtenant, in whose hands soever the same cometh.

The Statute extendeth only to Covenants which touch the thing demised, and not to collateral Covenants. 32 H. 8. C. 24.

An Assignee of an Assignee, Executors of an Assignee, Assignes of Executors, or Administrators of every Assignee, may have an Action of Covenant, for all are comprised within this word (Assignees) and the same Right that was in the Testator or Intestate, descends to the Executors or Administrators. Cook, lib. 5.

A Lease is made for life, the remainder over for life, the ramainder over in Fee; the first Lessee maketh Waste: And because he in the Fee hath no remedy by the Common-Law, and Waste is a wrong prohibited, he shall have relief in Chancery. Crompton. 49. 6.

A Woman sole, takes consideration for making a Lease for one and 44 Eliz.

twenty years, and then Marries; and she and her Husband made the promised Lease at the one and twenty years end; The Lessee surrenders, and takes a new Lease for one and twenty years more, the Husband dyes, the Wife *ousts* the Lessee, who sues in Chancery to have the first Lease continued rest for the first one and twenty years, and could not have remedy, because the surrender was voluntary, and the Court gives no relief against a voluntary Act.

A Lease is made of a House and Wood, wherein it is Covenanted, That the Lessee should have House-boot and fireboot; by this it is implied and meant, that he shall not have any of the Woods to use or convert to any other purpose; but that they do belong to the Lessor. And the Lessor shall have help in Chancery, leaving to the Lessee sufficient for House-boot and Fire-boot.

Lit. Ten. l. 1. If a man demise any Lands or Tenements to another by Lease parol, the Lessor ought to be seised of the Lands or Tenements which he le-

lets, at the time of the Leaſe parol made; or elſe he cannot maintain an Action for his Rent; for the Leſſee may plead that the Leſſor had nothing in the premiſes at the time of the Leaſe made, and then is barred of his Action: but if the Leaſe be made by Deed Indented, then the Leſſee cannot plead this plea thereunto.

If a man let's Lands to another by Leaſe, to hold the ſame at the will of the Leſſee; the Law intends it to be at the will of the Leſſor alſo, and he may put the Leſſee out when he pleaſes; likewiſe if it be let at the will of the Leſſor, it is intended at the Leſſees will alſo; for the Leſſor cannot force him to ſtay longer than he pleaſes. Cook. 1. part. Inſt. 55.

A Covenant made between Landlord and Tenant, that the Tenant ſhall have a new Leaſe upon the ſurrender up of his old Leaſe; And afterwards the Leſſor makes a Leaſe by Fine for more years to a third perſon; in this caſe the Leſſor hath broke his Covenant, although the Leſſee did not ſurrender: which by the words of the Covenant ought to *Covenants.* Noys Maxims, p. 13.

have been the first act; because the Lessor by letting the Lease to a stranger, did disable himself either to take the Surrender or make the new Lease.

Rent in Arrear upon a Lease for years, goeth to the Executors of the Lessor if he dye: As if *John Doe* makes a Lease for years to *Richard Roe*, and the Lessee covenanteth and granteth to pay unto the Lessor, his Heirs and Assigns, the sum of twenty pounds yearly during the term in the Lease granted; In this case if the Lessor dye, his Executors shall have the Rent in Arrear, and not his Heirs.

Hern. Law of Conv. p 107, 108, 109. Godbolt. Rep. fol. 69, 70.

John at Heath let's a Lease for years to *W. C.* and the Lessee covenants with the Lessor for him and his Assigns, to build a Brick-wall or an House upon the Lessors Land, or pay a collateral sum of mony to the Lessor; and afterwards the Lessee assigns over his term to another: here this Covenant shall not bind the Assignee, because the things were only collateral, and were not in *Esse*, nor part of the demise at the time of the Lease made.

If

If there be a Covenant in a Leaſe, that if the Rent be behind and unpaid, for ſuch a time (that is, by the ſpace of ſo many days after the uſual day or time of payment, in the Leaſe appointed and reſerved) then the Leaſe to be void; In this caſe, although the Leſſor do accept of the Rent after ſuch *failer* made, here no ſuch acceptance of the Rent can make the Leaſe Good. Dyer. f. 51.

If a Tenant take a Houſe and Lands by Leaſe for years, and covenants with the Leſſor to ſupport, uphold and maintain the Houſes during this term, and to leave the Houſes and Lands in as good repair, plight and eſtate as he found them: In this caſe if it ſhould happen that the Houſes be caſually burned by fire or lightning, or blown down by a Tempeſt, or deſtroyed by any other accident; If the Leſſee do not repair and build them again, and leave them as good as he found them, the Leſſor may ſue his ſaid Covenant againſt him at the end of his Leaſe; but if a Tenant make waſte in cutting of Wood or Timber contrary to the Proviſo's, Exceptions or Noys Max p. 16.

Covenants in his Leaſe, for ſuch a breach the Landlord may bring his Action of Covenant before the end of the term.

Hughs Grand Abridgements 1. par. p. 492. C. 19.

A man takes a Leaſe for years, and covenants and grants to and with the Leſſor, for him and his Executors, to repair the Houſes as often as need requires: and afterwards the Leſſee aſſigns over his Leaſe to another, and the Aſſignee ſuffers the Houſes to decay for want of repairs: in this caſe the Leſſor may bring an Action of Covenant againſt the Aſſignee, although he be not named in the Covenant.

Co. 1. par. Inſt. fol. 41.

A Landlord let's a Leaſe, and covenants with his Tenant that he ſhall have ſufficient hedge-boot, to be aſſigned him by the Landlord or his Bailiff: In this caſe the Tenant may not take hedge-boot without aſſigment.

Perkids Tit. conditions, 738.

If a man by Indenture take a Leaſe of a Houſe that is old, ruinous, or wanteth repairs, and covenants with the Leſſor to leave this Houſe at the end or expiration of the Leaſe in good repair. In this caſe he is bound to leave this Houſe in good repair

but

but if he do not covenant to do it, the Law then will not oblige him to do it.

A man by Indenture takes a Leaſe for years of a Wood, and covenants with the Leſſor, to leave his Wood in as good a condition as it was at the time of the Leaſe made; And during the term the Wood is deſtroyed, and blown down by violent Winds, and Tempeſts: in this caſe the Landlord can have no Action againſt the Tenant for the not performing of this Covenant, becauſe it is impoſſible for him to perform it; and the Law enforceth no impoſſibilities: otherwiſe it is if he take a Houſe, and that be blown down. Hughs grand Abridg. p. 499.

Touching bonds for performance of Covenant, if a man take a Leaſe for years rendring Rent, and enter into bond to the Leſſor to perform all Covenants and Agreements contained and comprized in the Leaſe; if he fail in payment of Rent, the bond is forfeited; for the payment of Rent is an agreement. Golds borow. p. 162.

If a man be bound in a bond, to repair the Houſe of the Obligee as Dr. & St. lib. 2. cap. 47.

often as need shall require during a certain time, and afterwards the Houses want reparations; In this case, although the *Obligor* doth not know that they want Reparations, yet he is bound to take notice of it at his peril, for ignorance will be no excuse in this case, because he hath bound himself to it.

But if the Condition had been that he should repair such Houses, as he to whom he was bound should assign, and after he assigneth certain Houses to be repaired, but he that is bound hath no knowledge of that assignment; this ignorance shall excuse him in the Law, because he hath not bound himself to any reparation in certain, but to such as the *Obligee* will assign; and if he assign none, the *Obligor* is bound to none; And therefore because he that should make the Assignment is privy to the Deed, he is bound to give notice of his own Assignment; but if the Assignment had been appointed to have been made to a stranger, then the *Obligor* had been bound to have taken notice thereof at his peril.

If

If a man makes a Lease for years with warranty, yet this is not a warranty in the Law, but a Covenant, because the Lease is but a Chattel; and if the Lessee be ousted, he may bring his Action of Covenant against the Lessor.

If *A.* be seised of twenty acres of Land, and let the same to *B.* by Lease for life or years, and *A.* reserves to himself five shillings Rent payable at *Christmas*, and *B.* binds himself to *A.* in a bond of one hundred pound to pay the Rent reserved upon the Lease justly according to the Law; if before any day of payment *A.* puts *B.* out of any part of the Land, and he doth occupy the residue for the whole term, and will not pay any Rent, yet the bond is not forfeited; for by putting the Tenant out of parcel of the Land, the whole Rent is in suspence: but if one day of payment be past before the *Ouster*, then the Tenant must pay the Rent, or else he forfeits his bond.

But if a stranger who hath no Right in the Lands do put out the Lessee for years out of the same Land

before any day of payment, and keep possession thereof until the day of payment be past; In this case the Tenant ought to pay his Rent at the day whereon it is appointed to be paid, or else he forfeits his bond. If three *Copartners* be seised of a Mannor, and one of them without consent of the other two let's a Lease of the whole Mannor in her own name unto *I. D.* for five years, paying ten pound yearly at *Christmas* unto the Lessor and her Heirs, and *I. D.* enters into bond in five pound to pay the Rent accordingly; and before any day of payment is come, the other two *Copartners* who agreed not to the letting of the Lease, do put the Lessee out of the whole Mannor, and keep the possession till a day of payment be come: here the Lessee ought to pay a third part of the Rent reserved to his Lessor, or otherwise he forfeits his bond; because the other two *Copartners*, who eject him out, have right but in two parts of the Mannor.

Perkins, 828. Copartners.

A man makes a Lease to three persons upon this condition, that neither they nor any one of them shall

Hughs gr. Abr. 1. par. p. 428.

ſhall alien, ſet, or let that Leaſe to any other, without licenſe firſt obtained from the Landlord. Now if the Landlord do give licenſe to any one of them to let or alien, then the other two may alien without licenſe: for the condition being determined to one, is determined to all.

In the ſame nature is a releaſe where many perſons commit a treſpaſs, if he againſt whom the treſpaſs is committed do releaſe one of the treſpaſſers, that releaſe is as effectual to all the reſt, as if they had been particularly named therein.

If a Landlord do enter for a condition broken, or the Tenant ſurrender up his Leaſe, or his term be expired; yet the Landlord may have an Action of Debt for the Arrears of Rent if any be. Noys Maxims, pag. 72.

If a man let's a Leaſe of Lands upon a ſpecial condition; that is, that the Leſſee ſhall not alien the ſame to ſuch a man or ſuch a man; then the condition ſhall be taken according to the words; And notwithſtanding that condition, they may be alienated Dr. & St. lib. 2. C. 35.

to

to any other, but to them to whom it is expresly prohibited that the Lands should not be aliened unto: And if the Lands in that case be aliened to one that is not excepted in the condition, then he may alien the Land to him that is first excepted, without breaking of the condition: for conditions be taken strickly in the Law, and without equity.

As, if a Lease be made to *A.* upon condition that he shall not let or alien the same to *B.* if the Tenant alien it to *C.* and he alien it to *B.* the condition is not broken.

Perkins, 710. If a man be seised of Lands in Fee, and let the same by Indenture of lease to a stranger, paying five pound Rent *per annum*, with a condition that if the Lessee will hold over ten years to him and his Heirs, that then he shall pay twenty pound *per annum*, and the Indenture is executed by Livery and Seisin to the Lessee: In this case the Lessor shall have an Action of Debt for the Rent in Arrear within the ten years, which proveth the free-hold and the Fee are not in the Lessee before the ten years expired

ed: but after the expiration of the en years, if the Leſſee doth continue he poſſeſſion of the ſame Land, and doth occupy the ſame by vertue of he *Indenture*, then he hath Fee, and hall pay the twenty pound as a Rent Seck.

But if a man ſeiſed in Lands doth et the ſame Land by Leaſe for term of life, yielding to him a Roſe for he firſt ſix years; and if he will hold the Land over the ſix years, hen to pay three marks *per annum*; Here the free-hold is immediately n the Leſſee. Co. 1. par. Inſt. f. 218. b.

A man makes a Leaſe for years, with this condition, that if the Leſſor do alien the Reverſion within he term granted by the Leaſe, then he Leſſee ſhall have the Fee; and the Leſſor doth alien the Reverſion in Fee by fine to a ſtranger; In this caſe the Leſſee ſhall not have a Fee, for the Free-hold and the Fee are lawfully in the *Conuzee* before the Leſſee can take it by condition: but if the Leſſor had granted the Lands to a ſtranger by Deed only, then the Leſſee ſhould have had Fee by the condition. Perkins, 729, 730.

Perkins, §13. If a man have a Leaſe for years and demiſe or grant the ſame upon condition, and dye; his Executors or Adminiſtrators ſhall enter for the condition broken; for they are privy in right, and repreſent the perſon of the dead.

Lit. lib. 3. C. 8. If a man make a Leaſe for years upon a condition that the Rent ſhall be paid at *Chriſtmas*, and before the time come, the Leſſor give a general Releaſe to the Leſſee of all Actions and Demands, this Releaſe doth not acquit the Leſſee of the Rent but the Leſſor may ſue for it, because it was neither due, nor to be paid at the time of the Releaſe made; and it is a thing not meet in Action, becauſe it may be granted over.

Dyer f. 67. If a Landlord let's a a Leaſe for years to two Tenants to hold Joyntly, with a condition that if the Leſſees dye before the end of the term the Leaſe ſhall be void: Now the Leſſees makes diviſion, and one of them aliens his part, and dyes; In this caſe the Leſſor cannot enter upon the part of him that dyed, but the Alienee ſhall enjoy his half-part during

during the life of the Surviving Leſſee.

A Leaſe made for years upon condition, that if the Leſſee demiſe the premiſes or any part thereof, other than for a year, to any perſon or perſons, then the Leſſor and his Heirs to re-enter; the Leſſee afterwards deviſes this Leaſe to his Son hy his Will: this is a breach of the condition.

If a man of his meer motion give Lands to *H. H.* and to his Heirs by Indenture, upon condition that he ſhall yearly at a certain day pay unto *John at Style*, out of the ſame Land, a certain Rent; and if he do not pay the Rent, that then it ſhall be lawful to *John at Style* to enter; and if the Rent in this caſe be not paid to *John at Style*, the ſaid *I. S.* may not enter into the Lands by the Law, though the words of the Indenture be that he ſhall enter; for there is an Ancient Maxim in the Law, that no man ſhall take advantage in a condition, but he that is party or privy to the condition: and this man is not party nor privy, and therefore he ſhall take no advantage of it. Dr. & St. lib. 3. cap. 20. fol. 93.

In

In many cases the intent of the party is void to all intents, if it be not grounded according to the Law.

Dr. & S. 20. C. f. 93.

As, if a man make a Lease to another for term of life, and after, of his meer motion, he confirmeth his Estate for term of life to remain after his death to another and his Heirs: In this case that Remainder is void in Law; for by the Law there can no Remainder depend upon any Estate, but that the same Estate beginneth at the same time that the remainder doth: and in this case the Estate began before, and the confirmation enlarged not his Estate, nor gave him any new Estate. But if a Lease be made to a man for the term of another mans life, and after the Lessor, only of his meer motion, confirmeth the Land to the Lessee for term of his own life, the Remainder over in Fee; this is a a good Remainder over in Fee.

Dr. & St. lib. 2. C. 20. p. 94.

No grant can be made, but to him that is party to the Deed, except it be by way of Remainder; And there-

herefore if a man make a Leaſe for erm of life, and afterwards the Leſſor grant to a ſtranger that the Tenant for term of life ſhall have he Land to him and Heirs; that rant is void, if it be made only of his meer motion without recompence.

Likewiſe if a man make a Leaſe for term of life, and after grant the Reverſion to one for term of life, the Remainder over in Fee, and the Tenant Attorneth to him that hath the Eſtate for term of life only, intending that he only ſhould have advantage of the grant: his intent is void, and both ſhall take advantage thereof, and the Attornment ſhall be taken good according to the grant. Ibid.

If a Tenant for the term of another mans life dye, living the other man, he that doth firſt enter upon the Eſtate, after his death, ſhall be Tenant for the other mans life, and ſhall be liable to the payment of the Rent reſerved. Co. 1. par. Inſt. fol. 41.

If a Tenant hath a Leaſe for twenty years, of Lands and Tenements, and grant the ſame Lands for part of his term Perkins, 693.

term to a ſtranger, reſerving t
himſelf forty ſhillings Rent; In th
caſe he may diſtreyn for the Re
reſerved, or have an Action of De
at his pleaſure, becauſe by comm
Intendment he is to have the ſa
Land after the years determined
beeauſe he hath granted but par
of the years, ſo that the Remain
remains in him.

Idem, 108. If Rent be granted to a man,
may grant it away to another bef
he be ſeiſed thereof.

Co. 1. par Inſt. fol. 46.] If a man and his wife be eje
of a term in the right of his wi
and the husband bring an *Ejectio firme* in his own name, and do re
ver, and dye; In this caſe his Exe
tors ſhall have it; and not the wi
becauſe the Recovery in his o
name did veſt the term in himſelf

Cook. ibid. If a man be poſſeſt of a term
forty years in right of his wife, a
make a Leaſe for twenty years
ſerving Rent, and dye; here the Ex
cutors of the husband ſhall have t
Rent for that term; but the wi
ſhall have the remainder of the ter
when the twenty years is out: but
he had gtanted the whole term

he could have had nothing.

A Releaſe made to a Tenant for term of years before his Entry, is void; but a Releaſe of the Rent before Entry, is good. Id. 1. par. Inſt. fol. 270.

The Tenant may grant away his Intereſt to another before Entry; and although the Leſſor do dye before Entry, yet the Tenant may enter into the Lands; and if the Leſſee dye before he enter, his Executors or Adminiſtrators may enter; and if a Leaſe be made to two, and one of them dye before entry, the other may enter by ſurvivorſhip; and a Leſſor cannot grant away a Reverſion by the name of a Reverſion, before the entry of the Tenant.

If a man grant to a Tenant for years, that he ſhall have ſo many *Eſtovers* as ſhall ſerve to repair his houſe, or that he ſhall burn within his houſe, or ſuch like, during the term; this is appurtenant to the Land, and ſhall run with the ſame as a thing appurtenant, in whoſe hands ſoever the ſame cometh. Co. 1. par. Inſt. f. 41.

If Two Tenants in common do grant a Rent of ten ſhillings, this is ſeveral, and they ſhall be charged with Idem, 1. par. Inſt. f. 197.

with twenty shillings Rent: but they make a Lease, and reserve shillings rent, they shall have no but only ten shillings between the

If two *Copartners* make a Le reserving Rent, they shall have Rent in common, as they have Reversion: but if afterwards grant the Reversion, excepting Rent, then they shall be Joynt- nants of the Rent.

Dyer 56. & 82. If man leases Lands for years serving Rent, and a stranger recover part of the Land, then Rent shall be apportioned, viz. div ed, and the Tenant shall pay havi respect to that which is recover and to that which still doth rem in his hands according to the va to each party proportionably.

If a man make a Lease except a Close and Wood, the Law giv him a way to come to it.

Perkins, 117. If a Tenant for years do tak new Lease for more years, this Surrender in Law of the old Le

Hutton. Rep. 104. *Watt. and Maidwels case. Hil. 3. C R. 1302. B. R.*

Noys Max. 74. A Lessee for years cannot Surre der before his term begin; neith

an he ſurrender part of his Leaſe, ut he may grant part of it.

If a Tenant for life or years re- Idem p. nove his goods out of the houſe and 72. nd, by reaſon of the greatneſs of he Rent, or for any other cauſe, and he Leſſor do enter into the Houſe nd Lands; this is no ſurrender of he Leſſee.

If a Tenant for years aſſign over is term and dye, his Executors ſhall ot be charged for Rent due after is death.

And if the Executors and Admi- ſtrators of a Leſſee for years do ſign over their right in the Leaſe, ere lieth no Action of Debt againſt em for Rent after ſuch an Aſſign- ent by them made.

If a Tenant for years aſſign his Hern. law of aſe to another, the Landlord may Cony. p. arge which of them he will: but if 110. once acept of the Rent from the ſſignee, knowing of the Aſſign- ent, he cannot afterwards bring an ction of Debt againſt the Leſſee, r Rent due after the Aſſignment.

If a Leſſor grant away the Rever- Popham. on, after the Aſſignment of the 55. eſſee; In this caſe the Grantee can- not

not have an Action of Debt against the Lessee for the Rent, because there is no privity between them.

Perkins, 536. If a Lease for years be made to a man without any consideration the Lessee shall be seised to his own use.

Dr. & St. l.1.C.24. If a man make a Lease of Lands to another, and to his Heirs for the term of twenty years, intending that if the Lessee dye within the term that then his Heirs should enjoy the Lands during the Term; In this case his intent is void: and if the Lessee dye, his Executors, and not his Heirs shall enjoy the term; for by the Law of the Land, all Chattels shall go to the Executor, and not to the Heir.

Nem. L. of Conv. p.104. If a man let's a house with the appurtenances, no Land passes thereby: but if it be with all Lands thereunto belonging, here the Lands go with the house do pass.

Terms delcy. Estopple. Co.1.par. Inst.fol. 47. If a man take a Lease of his own Land by Indenture, he is thereby concluded to say that the Lessor had nothing in the Land at the time of the making of the said Lease; but after the Lease is out, the *Estoppel* is removed.

If two perſons be Joynt-tenants of a Leaſe of years, and one bid the other go out of the houſe, and he goeth out; he that goeth ſo out may have an *Ejectione firme* againſt the other, as well as if he had Ejected him out by force. Beverlies caſe 24. Car. Claytons Rep. p. 111.

CHAP. III.

Of Payment of Rent, Acceptance, and Extinguiſhment thereof; Demands, Entrys, Dates, Continuance, Limitations, and Determinations of Leaſes.

IT ought to be a principal care of a Tenant, above all things to provide his Rent at the time of payment, whereby he may avoid much *Slavery* and *Knavery*, of cruel biting Landlords.

If a Tenant be to pay his Rent to his Landlord at our *Lady-day* and *Michaelmas*, or within fourteen or fifteen days after either of the ſaid

ſaid Feaſts; in this caſe, he is no
bound to pay his Rent until the la
day limited for payment, for th
is the legal day of payment, and th
other before voluntary.

And if there be a clauſe, that if th
Rent be behind by the ſpace of fi
teen days (more or leſs) after any
the ſaid days of payment, then t
Leaſe to be void; In this caſe, if t
time limited be fifteen days, the
the Tenant ſhall have thirty days
ter any of the ſaid Feaſts, to ſave h
Leaſe: But if the clauſe in the Le
be, that if the Rent be behind for t
ſpace of fifteen days next after eith
of the ſaid Feaſt days of payme
here the Tenant hath but fifteen da
only allowed him: and ſo the divi
ſity is to be noted in this caſe in t
words of a Leaſe, which with a ve
little and ſcarce obſervable alteri
on makes ſo much advantage for t
Tenant. *Co.* 10. *lib. f.* 227. *Cook*
*par. Inſtitutes, f.*202. *Hern. Law*
*Conv. p.*23.

Hern. p. 22,23. If a man take a Leaſe for years t
pay his Rent at our *Lady-day* an
Michaelmas, or within fifteen da
after either of the ſaid Feaſts, an
th

the Landlord dye after either of the said Feasts, and before the fifteen days be out; the Heir in this case shall have the Rent then; for the first day is but voluntary, and the legal day of payment is at the end of the fifteen days; and if the Tenant before that day pay the Rent, such payment is voluntary, and not satisfactory; but if payment be in the Morning, and the Landlord dye at Noon, it is good to give Seisin: and though this payment be voluntary, yet it is Satisfactory against the Heir. *Hare and Savills case. M 7. Jac. in com. B. Brownl. Rep. 2. par. p. 273.*

If a Tenant for years be to pay his Rent at *Michaelmas*, and to perform other Covenants, and if he be bound in any Obligation to pay his Rent precisely at the day; he must in this case seek out his Landlord to pay him; but if his Obligation be only to perform the Covenants in the Lease, he may then tender his Rent upon the Land, (if no other place be by agreement appointed for the payment thereof) and it is sufficient: for the payment is of the nature of the Noys Max. p. 80.

Rent reserved. *Manly and Jennings case, Barch.* 10. *Jac. in C. B. Brownl. Rep.* 2. *par. p.* 176.

When one is to pay Rent at a certain day, he hath all that day till night to pay it; but if it be a great sum, he must then have it in readiness so long before Sun-set, as they that are to receive it may see to tell it, for they are not bound to tell it by Candle-light.

If a *Parson* let his Glebe-lands to a lay-man, the Tenant shall pay the Parson Tythe, of that Land beside the Rent: for the Tythes are of Common right.

Co. 1. part. inst. f. 47. & 292. If a man let out by lease a stock of Cattel or other Goods, (as it is very usual now a-days to Lease out Silk-stocking-frames to the *Weavers*,) and the Rent be to be paid at several days; if the Rent in this case be in Arrear, the Lessor cannot bring an Action against the Tenant or occupyer thereof, until all the days be expired; In like manner as it is in an Obligation with condition for several payments; because these are personal contracts. But it is otherwise in case of a Lease for years

years, which is a real Contract; for there the Landlord may have an Action of Debt against the Tenant, after every day of payment, if default be made; or he may distreyn, at his Election.

If there be two Joynt-tenants, and they make a Lease for years,, by Parol or Deed poll, and reserve Rent to one of them; this shall enure to them both: but if it be by Deed indented, it shall enure to him alone, by way of conclusion. *Cook*, 1 *par. Inst. f.* 47. *Co.* 8; *l. f.* 70, 71.

If an Heir let Lease to a Tenant for life, and reserves a Rent; against whom the mother of the Heir recovers her Dower, and dyeth; the Tenant shall have the Land again for his life, and the Rent is revived. Cook on Lit. f. 42.

If the Successor of a Parson or Vicar accept the Rent of a Lease for years made by his predecessor; yet this acceptance is worth nothing, for the Lease is void by death; but of a Lease for life, it is otherwise. *Tenants case.* Cook. l. 3. f. 65, 66.

But if a Bishop accept the Rent up-

on a Leaſe for years, he ſhall never avoid it; for it was but voidable only, and his acceptance hath now confirmed it.

Acceptance. If a man have Lands in the right of his Wife, and he and his Wife let theſe Lands for years reſerving a Rent, and afterwards the Husband dyes, and ſhe before any day of payment takes another Husband, who accepts the Rent and dyes: by this acceptance the Leaſe is affirmed.

In like manner if a man and his Wife let the Lands of his Wife for years rendring Rent, and the Husband dyes; if the Wife accept the Rent, it is a good Leaſe. *Terms of the Law, Acceptance.*

But if a Tenant for life, Leaſe lands for years and dyes, the Leaſe is void, and the Rent which is reſerved upon the Leaſe is determined. And although he in remainder do accept the Rent, yet his acceptance will not make it good: for when it is once void by death, no acceptance after will make it good.

So likewiſe, if a Tenant in Dower leaſe for years and dye, the Leaſe is void,

void, and acceptance of the Rent by the Heir will not make it good again.

A Leaſe for years may be confirmed for a time, or upon condition, or for a piece of the land; but if it be a Frank-Tenement, it ſhall enure to the whole abſolutely. Noys Max. p. 78.

Obſerve this difference between a Leaſe for life and a Leaſe for years: in caſe of a Leaſe for life, though the concluſion of the condition be, that it ſhall be void, yet acceptance of the Rent due after the breach, doth affirm it, and make it good again. *Pennants caſe*, 38. *Eliz. Co. 3. l.*

If a Parſon let a Leaſe for years of his Glebe-land, if it be confirmed by Patron and Ordinary, it ſhall bind the Succeſſor, or elſe not. Cook Inſt. f. 300.

If a Leaſe be made to a man for the term of another mans life, and afterwards the Leſſor only of his meer Motion, confirmeth the Land to his Leſſee for term of his own life, the Remainder over in Fee; This is a good remainder in the Law. Dr. & St. 2. l 20. chap. f. 93.

Hern I. Conv. p. 118.

If a man let Lands for life or years, reserving Rent, and do enter into any part thereof, and take the profit; the whole Rent is thereby extinguished, and shall be suspended during his holding thereof. *Leonards Rep.* 110. *Goddards case*, *Mich.* 34 *Eliz. com. Banc. Owens Rep. fol.* 10.

Co. 1. par. inst. f. 202.

If the Tenant come to the Landlord at any place upon the ground at the day of payment, and tender his Rent to the Landlord, it is good enough, and shall save the condition; and the Landlord is bound to receive it, although it were not at the most *notorious* place, nor last instant of the day; for he may tender his Rent at any time of the day, although the last instant be the legal time of payment.

But observe by the way, that a tender of Rent must be of the whole Rent, without deduction of Taxes, or Assessments, or any other charges; for stoppage is no payment in the Law. *Tr. 23. Car. in B. R. Regist. practi. p. 327.*

Co. 1. par. Inst. f. 202.

If a man let Land by Lease for years to another, reserving Rent of

of the Land to be paid at *Michaelmas* and our *Lady-day*, or within fifteen days after, and for default of payment to re-enter; In this case it is sufficient and lawful for the Tenant to tender his Rent, the last hour of the last day, if the money can be told in that time before it be dark; and so it is sufficient for the Landlord to demand it the same hour.

If a Lease be made with this Proviso, That in case of *non*-payment, the Landlord to re-enter; here if the Landlord distreyn, he may not re-enter, but he may accept of the Rent and yet re-enter; but if he do receive the next Rent again, then he cannot re-enter, for that establisheth the Lease. Entry into an acre of land, in the name of the whole, is a good entry; if the Land do all lye in one County. 1. Par. Inst. p. 211.

In a Lease for years, if the Lessee covenant, that if he or his Executors or Assigns do alien, that then the Lessor shall re-enter, and afterwards he makes his Wife Executrix and dyes; and the Widow marries again, and her second Husband aliens,

In this case the Lessor may re-enter because the second husband is Assignee in the Law.

Dr. & St. l. 1 c 20. f. 35. If a man make a Lease for term of years, yielding to him and to his Heirs a certain Rent, upon condition, that if the Rent be behind and unpaid by the space of forty days after any of the days of payment that then it shall be lawful to the Lessor and his Heirs to re-enter. And after the Rent is behind forty days, and is demanded by the Lessor and is not paid; the Lessor dyeth and his Heirs enter. In this case his entry is lawful, but if the Lessor had dyed after the Feast-day, and before the fortieth day, so that he had not demanded the Rent, and his Heir had demanded the Rent at the fortieth day, and for *non*-payment he re-enters, in this case his re-entry is not lawful.

Dyer 254. If a Lease be made to *H.* for one and forty years if he live so long, and if he dye within the aforesaid term, that then the Wife of the aforesaid *H.* shall have it for the residue of the said years, this limitation is void: for if *H.* dye, the term ends, and his Wife shall have nothing in it. If

If a man let all his Meadow in *D.* containing ten Acres; if there be twenty Acres of it, all passes in this case. Dyer f. 80.

If a man make a Lease for years, and afterwards make a Deed of Feoffment, and delivers Seisin; If the Lessee be upon part of the premises, and neither know nor assent to it, yet the Livery is void: for though the Lessor hath the Freehold and Inheritance in him, yet the possession is in the Lessee; and Livery must be given of the possession: but if the Lessee be absent, and hath neither Wife, Children, nor Servants (though he have Cattel) upon the ground, the Livery shall be good. 1 part. Inst. f. 48.

If a Lease be made to hold from the day of the making; or from the day of the date, or from the date, the Lease shall begin the day after it is delivered. Dates.

If the *Habendum* of a Lease be for a term of one and twenty years, without mentioning when it shall begin; it shall then begin from the Delivery. So if an Indenture of Lease bear Date upon days Co. 1. par. Inst. f. 46. Cro. 2. pa. 263, 264.

impossible, as *Feb.* 30. or *March.* 40. There being no such days in our Accompt, in this case if the term be limited to begin from the Date, it shall take effect and beginning from the Delivery, as if there had been no Date at all.

Noys *Max.* p. 67. If Lands descend to an Heir, he may make a Lease thereof before his entry into the same. If a man makes a Lease to day to one for ten years, and to morrow makes another Lease of the same Lands to another person for twenty years; this second Lease shall be good after the first is expired, for so many years as remaineth therein to come.

Co. 1. par. Inst. fol: 45. If a man make a Lease to another for one and twenty years, and after another Lease to commence from the end and expiration of the said term of years, and after the first Lease is surrendred; In this case the second Lease shall commence presently upon the surrender.

But if it had been made to commence from the end of the said one and twenty years, there though there had been a surrender, yet it should not have commenced till the term had been

been out; so that by this you may observe, the Law puts a distinction between term of years, and time of years.

If a man lets Lands to another to hold, till the Lessee hath levyed twenty pounds; this is a good Lease, notwithstanding the incertainty.

Bracton saith that every Lease must have a certain beginning, and ending; *Quia id certum est, quod certum reddi potest.* Yet you see by the case before, this Rule is contradicted, so that it holds not always, although in the generality it doth.

For if a man make a Lease to another for so many years as *I. S.* shall name, although this be incertain at the beginning, yet when *I. S.* hath named the years, it is then good for so many years as he names.

So likewise, if *A.* be seised of Lands in Fee, and do grant to *B.* that when he pays him twenty shillings, that then from that time he shall have and occupy the Land for one and twenty years; and after *B.* pays unto

Co. 11. par. Inst. fol. 45.

unto *A.* the twenty ſhillings; this is a good Leaſe for one and twenty years from that time. *Co. 6. l. f.* 34. 35.

If a Parſon make a Leaſe of his Glebe for ſo many years as he ſhall be Parſon there, this is void, becauſe of the uncertainty thereof; for the Parſons time there terminates with his life, then which nothing is more uncertain.

If a Leaſe be made for one hundred years, if *A.* and *B.* live ſo long; in this caſe if either of them dye, the Leaſe is ended.

Co. 2. par Inſt. fol. 45. If an Infant who is ſeiſed of Lands in Soccage, make a Leaſe at his age of fifteen years; this is good, and ſhall bind him.

Co. 1. par Inſt. fol. 46. If a Tenant in Fee marry a Wife, and make a Leaſe of his Lands for years, and after dye, and the Wife is thereof endowed, here ſhe ſhall avoid the Leaſe, but after her death it ſhall be in force again, againſt the Heir.

Co lib. 8. f. 49. If a man have a term of years in the right of his Wife, if the dye, it remains to him, but if ſhe ſurvive him, it remains to her, and not to his

Ex-

Executors, without he disposé of it in his life-time.

If a man licensé another to enter and occupy his Lands, this is a good Leasé for years in Law. *Brownl. 2. part. p. 250.*

A Leasé for years, although it be never so long, cannot be entayled, because it is a Chattel, which cannot be turned into an Inheritance. *Styles Regist. pract. p. 197.*

If a man seised in Fee-Simple let a Leasé to another, to have and to hold the same Lands for term of life, and do not mention whosé life; it shall be taken for the Lessees life; because the act of every one shall be taken most strongly against himself.

But if a Tenant in Tail let such a Leasé without expressing whosé life, it shall be taken for the life of the Lessor.

If a Joynt-Tenant make a Leasé for Years, of his part, though the Lessee never had possession, or though it be to begin at a Day to come; and the Joynt-Tenant that made it dye before the day, yet the Survivor shall be bound by the Leasé, Co. 1. par Inst. f. 185

Lease, for the Lessee hath a present Interest,

If two take a Lease for their lives and make partition, either of them dying, his part immediately revert to the Lessor.

Golds Rep. 187. If there be two Joynt-Tenants for life, and one of them makes a Lease for eighty years, to begin after his Death, and after dyes: This Lease is good against the Survivour.

Dr. & St. Hb. 2. c. 33. If a Lease be made to the Husband and the Wife, yielding a great Rent than the Land is worth, if the Husband dye, the Wife after the Husbands death may refuse the Lease, to save her from the payment of the Rent: but if the Husband over-live the Wife, and then make his Executors, and dyes, if they have Assets, that is, if they have goods sufficient of their Testator to pay the Rent, they cannot refuse it: but if they have no goods sufficient of their Testator, to pay the Rent to the end of the term, if they relinquish the occupation, they may by special pleading discharge themselves of the Rent and the Lease.

If

If I let Lands in which are Mines, or Trees, I cannot enter to take the Trees, or Mynes, but am a Treſpaſſer, unleſs I do reſerve ſuch a priviledge to my ſelf when I let the Lands.

But if a Leſſor do come upon the grounds Leaſed, he is no Treſpaſſer, for it ſhall be intended, that he came to ſee if Waſt were done.

If a Tenant for years, happen by any caſualty to looſe his Leaſe, yet he ſhall not looſe his term in the Lands let by ſuch Leaſe which is loſt, if it can be proved that there was ſuch a term let to him by Indenture, And that it is not determined.

CHAP.

CHAP. IIII.

Of Corn sown, who shall have the Crop? of Estovers, and Trees blown down; of Distresses, What things may be distreyned, and how used; who may take a Distress; for what cause, when, and where?

IT is a usual saying, and generally received opinion, that he that Sows must Reap: but as there is no general rule without some exception; so this holds not always, that he that Sows shall Reap.

But touching the Sowing of Corn; if the Tenant be outed, or his term ends before it be ripe, who shall have the Corn I have already set down in the first *Chapter*, under the Title of *Tenant at Will*: for if a Tenant at Will Sow his Land, and the Landlord put him out before the Corn be ripe, he shall have liberty to Reap and carry away his Corn, because

cause he knew not when his Landlord would put him out.

But it is contrary with a Tenant who hath a Lease for years: for if his Lease be out before the Corn be ripe, his Landlord shall have it; because he knew the end of his Lease: wherefore if he Sowed, it is in his own wrong, unless there be a Covenant in his Lease between the Lessor and him, that he shall have his way-going Crop.

But if a Tenant at Will, set Roots, or Sow Hemp or Flax, or any thing that brings in any yearly profit, if after the planting the Lessor out him, or if the Lessor dye, yet the Tenant or his Executors shall have the Crop. But it is otherwise if he plant young Fruit-Trees, or other young Trees, as Oaks, Ashes, or Elms; or Sow the ground with Acorns; In this case if the Lessor out him, he shall have none of these, because these yield no yearly profit at present.

If a Tenant for life Soweth the ground, and dye before the Crop be ripe, his Executors shall have it; and so they shall have Grass if it be

be cut, but if it be *unmown* they shall not have it, for that is part of the Inheritance till it be severed.

Every Tenant that hath an Estate incertain, shall have the corn sown by him; though he be outed before it be ripe.

If a man be seised in Land *Jure uxoris*, and Sow this Land, and dye before the Corn be ripe; his Executors shall have the Crop: but if they be joynt-tenants of Lands, and the Husband soweth the ground and dyeth, the Wife shall then have the Crop.

See my *Consultum pacis*, p. 83.

But if a Woman who holds Land *Durante viduitate sua*, while she continues her Widow-hood, and Sows the ground, and marries a Husband before the Corn be ripe here the Lessor shall have the Corn because her Estate ends by her own act.

Heru. I. of con. p. 239.

If a man lets a Lease of his Wife's Land, she not joyning with him, this Lease is void after his death; but if the Lessee have sown the Land, he shall reap the Crop.

Noys Max. p. 70.

A Tenant holds by Lease, and the Land is recovered against the Land-

Cowel. Inst. p. 142.

lord

ord by a title *Paramount*; in this
ase if the Tenant have Sown the
and, he that hath recovered it shall
ave the Crop, if it be not reaped be-
re Judgement.

There is three kinds of *Estovers* in the Law, which is incident to the estate of every Tenant, whether it be for life or years. *Estovers or Boote.*

House boote, of which is two kinds; the one to repair the Houses, the other to burn, which is called *Fire-boot.*

Then there is *Estovers*, called *Plough-boot*; that is, stuff to mend the Tenants Ploughs, Carts, Harrows, Wayns, and making Rakes and Forks for getting in his Hay and Corn.

Thirdly, There is another kind of *Estovers*, called *Hedge-boot* this is Timber and wood for making Gates, and Styles; and Boughs and Bushes for mending and repairing Hedges, and Fences.

So there is *Estoverium edificandi & ardendi*, House-boot.

Estoverium arandi, or Plough-boote.

Estoverium Claudendi, or Hedge-boote.

Esto-

Estover is a word something harsh in sound, being unusually heard by the Ears of Tenants; but *Boote* well known to them.

The one is *Norman*, the other *Saxon*; and both have the same signification, *viz.* an allowance. Compensation, or Satisfaction. Any of these *Boots*, a Tenant may take without assignment of the Landlord, unless he bee by the Landlord restrained by special covenant in his Lease which is very usual amongst many Landlords, especially if the Farm be any thing considerable; then they commonly limit the Tenant how much *House-boot*, or *Plough-boot* or *Hedge-boot*, he may take without assignment; and how much by assignment.

Co l. 4. 31. If a Tenant for life or years, cut down Trees, or pull down Houses, or suffer them to fall down; the Lessor shall have the Trees, and Timber, of the said Houses: for the Lessee had them only as things annexed to the Land; and this severance will not give him a greater estate in them.

The Landlord shall likewise have Wind-

Windfals; that is, Timber-Trees blown down by Wind and Tempeſt, because they are parcel of his Inheritance; ſo that the Tenant for life nor years cannot have them, unleſs it be to build withal where Houſes are in decay. But if they be *Pollards* without Timber, the Tenant ſhall have ſuch when they are blown down.

Diſtreſſes is a Law of cuſtom; that is, if Rent be in Arrear and unpaid, the Landlord may take a lawful diſtreſs; and that he ſhall put in pound Overt, there to remain until he be ſatisfied of what he diſtreyned for. *Diſtreſs.*

So that if a Landlord diſtreyn the Cattel for Rent, and put them in a pound Overt, and the Beaſts, dye there for lack of meat, it is at the peril of him that ow'd the Beaſts, and not of him that diſtreyned: for in him that diſtreyned there can be aſſigned no default, but the default was in the other, becauſe the Rent was unpaid. Dr. & St. l. 1 C. 5. p. 10.

Now a diſtreſs muſt be made of ſuch a thing wherein ſome body hath a certain and valuable Property;

perty; therefore such things as are *Ferae naturae*, cannot be distreyned, neither can any one distreyn a Horse if any body be on the back of him, nor any thing which a man holds in his hand, or carrieth about him, annexed to his body.

And although the Law be, that Landlord may distreyn any thing that he finds *Levant* or *Couchant* upon the premises for his Rent behind, whose Goods or Chattels soever it be, and may detain the same until his Rent be satisfied; yet this general Rule hath some Restriction and Limitation, for there are several things whereof a Distress cannot be taken.

What cannot be distreyned for Rent.

Such things as are for the maintenance and benefit of trades, cannot be distreyned for Rent; as a Horse in a Smiths Shop, nor a Horse in an Inn, cannot be distreyned for the Rent thereof; nor the Materials in a *Weavers Shop*, nor the making of Cloth, nor Cloth or Garments in a *Taylers Shop*, nor sacks of Corn, nor Meal in a Mill for the Rent thereof; nor any thing that the Tenant hath distreyned for

Noys *Max* p. 124.

Terms of the Law, titl. distress.

damag-

damage feasant, for that is in the cu-
stody of the Law.

Likewise Oxen of the Plough may not be distreyned, nor a Mill-stone, though it be raised to be picked, so long as it lies upon the o-ther Stone. Cook on Lit. f 47.

Neither may a Distress be taken of Sheep, if there be a sufficient Distress besides.

Neither can a man sever Horses joyned together, or to a Cart.

Likewise victuals, nor Sheafes or Shocks of Corn cannot be di-streyned: But Carts or Waggons loaded with Corn may be distreyn-ed either for Rent, or *damage feasant*. Cook. ibid.

No mans Tools wherewith he works at his Trade shall be distrey-ned, as the Carpenters Axe, or a Schollars Books, *&c.* Cook ibid.

Neither can any thing which is fixed to the Free-hold be distreyned, as Furnaces, Coppers, or Fats fixed for Dyers or Brewers, (although the Tenant may remove them during the term) nor the Windows or Doors of a House, while they are upon the Hinges. But if they be removed

off

off from the Hinges, they may be di
ſtreyned.

The Landlord cannot diſtre
Tables dormant in the Houſe of h
Tenant, nor any thing which ca
not be attached in an Aſſize; ne
ther can any thing be diſtreyne
of which the Sheriff cannot ma
a *Replevin*, or that cannot be r
ſtored again in as good a condi
on as it was when it was diſtre
ned.

But a man may diſtreyn the Bea
of a ſtranger (that come by eſcap
for Rent, though they have not be
Levant and *Couchant* upon th
ground, according to *Cook*, 1. *par. In*
f. 47.

The Lord of a *Leet* may ſell
diſtreſs taken for an Amerciame
in his *Leet*, as the King may
a diſtreſs, becauſe it is the Kin
Court.

Dr. & St. *l.* 2 *C.* 27. If a man diſtreyn Goods or Cha
tels, he may put them where he wil
either in a pound *Covert*, or *Ope*
but if they take any harm he mu
anſwer for them.

If they be living cattel, they ough
to be put in a common Pound,

elſe in ſome open place, as in his own Yard or Cloſe that diſtreyned them, or in ſome others by his conſent; ſo that the owner may come lawfully to feed them: And the owner of the Cattel muſt have notice where they are, if they be not in a common Pound; and then if they dye for want of meat, it is the owners fault (as it is ſaid before,) but if they be in a Pound covert, or out of the County, and dye for want of meat, then he that diſtreyned them ſhall make ſatisfaction for them.

Cattel taken *damage feaſant*, may be impounded in the ſame Pound, where they are *damage feaſant*; but Goods or Cattel taken for other things may not. Kitchin. f. 207.

No man ought to drive a diſtreſs out of the Country where it is taken, nor out of the hundred, but to a pound *Overt* within three miles; neither may a diſtreſs be impounded in ſeveral places; nor above four pence taken for the Fees of impounding one whole diſtreſs, on pain of five pound. Co. 1. part. Inſt. p. 57. Raſtal title diſtreſs. 11. Wingat. abr. p. 133.

If a man diſtreyn Beaſts *damage feaſant*, and put them in the Pound Dr. & St. l. 1. c. 27.

Overt, within the ſame County, not above three miles out of the hundred; and the owner ſuffer the Beaſts to dye for lack of meat, the loſs is his own, and he that deſtreyned them, may be at liberty to bring his Action for the treſpaſs if he will; and if it be not a lawful pound, then it is at the peril of him that diſtreyned them; and ſo it is if he drive them out of the Shire, and they dye there.

Ibid. If the owner of the Cattel tender amends to him that deſtreyned, and he refuſe it, yet the owner may not take his Cattel out of the pound; for he may not be his own Judge: and if he do, a Writ *De parcâ fractâ* for breaking the pound lieth againſt him; but he muſt ſue a *Replevin* to have his Cattel delivered him out of the pound, and afterwards plead his tender of amends, of which the Jury muſt end the controverſie.

Ibid. If the owner of the Cattel procure a *Replevin* to deliver them, and he that deſtreyned them reſiſt it, and will not deliver them; in this caſe if they dye after for want of meat, it is at the peril of him that diſtreyned,

l, and the owner shall recover da-
mages against him in an Action up-
n the Statute for not obeying the
kings Writ.

If a man sends his Servant to take
distress for a Rent or Service,
ho puts it in the pound; if the
wner of the Beasts, or a stranger
ake them out, I shall have an Acti-
n *De parco fracto* for breaking of
he pound.

And if one destreyn Cattel, and
ound them in another mans Close
ith his consent, and the owner of
he Cattel come and take them out;
this case he that made the distress
all have his Action for Pound-
reach, and the owner of the Close,
Action of trespass for breaking of
s Close.

There be certain cases where a
an may distreyn of common right,
nd where not of common right a
an may distreyn for Rent-Ser-
ice, Homage, Fealty, Escuage, Suit
Court, or for Rent reserved upon
gift in Tail, Lease for life, Years or
ill, though there be no clause of
istress in the Lease, because these
istresses are of common right.

Co. 1. par. Inst. f. 204, 205.

Dr & St. l. 2. C. 9. But for Debt, Accompt, Trefp
or for Reparations, or the like, a
cannot diſtreyn, neither can any
ſtreſs be taken for any Serv
which are not certain, nor ca
reduced, or brought into any
tainty. And upon an Avowry
mages cannot be recovered, for
which neither hath certainty,
can be reduced to certainty.

Nevertheleſs (although it
Paradox) in ſome caſes there ma
a certainty in an incertainty: As
a man to hold of his Lord, to
all his ſheep depaſturing within
Lords Mannor; and this is cer
enough; although the Lord hath
always a certain numher of ſhe
but ſometimes a greater numb
and ſometimes a leſſer; yet thi
certainty being reduced to the
nor which is certain, the Lord
diſtreyn for. And a diſtreſs i
ſeparably incident to every Ser
that may be reduced to certainty.

A man may not diſtreyn for R
after the Leaſe is ended, nor ou
the premiſes, except in ſome ſpe
caſes; nor in the night, unleſs i
damage feaſant.

But the Executors or Administrators of him who had Lands in Fee, or Fee-tail, or for life, may either have an Action of Debt against him that would pay it, or distreyn for it; and so may the Husband, after the death of his wife, his Executors or Administrators, and he which hath Rent for another's life, for the Arrearages after his death.

A man puts Cattel into my Pasture for a week, and afterwards I give him notice that I will keep them no longer, and he will not fetch them away; I may then distreyn them *damage feasant*. Noys Max. p. 33.

If a man take Cattel *damage feasant*, and as he is driving them to Pound, they run into the Yard or House of the man that owes them, and he refuses to let them out again; he that distreyned them may have a Writ of *Rescous*, against the owner of the Beasts for so doing.

If a Landlord come to distreyn for Rent, and see the Cattel, and the Lessee or his Servants drive them out of his Fee; he cannot have a Writ of *Rescous*, because the Cattel Co. 1. par. Inst. f. 161.

were not in his possession: but he may follow after them, and distreyn them in another mans ground, being for Rent, but not for *damage feasant*; for they must be taken *damage feasant*, that is, doing damages.

Claytons Rep. p. 64. pl. 111.

If a man distreyn goods, and declare not the cause or reason wherefore he doth it, if they be put in a House, the owner may break the House, and take them out.

Or if a man distreyn goods without cause, the owner may rescue them; but if they be pounded, he cannot break the pound and take them out, because they are then in the custody of the Law.

But if he find the pound-door unlockt, he may take them out.

Although there be a general prohibition in the Laws of *England* that it shall not be lawful for any man to enter upon the free-hold or Possession of another, without permission and Authority of the owner, or of the Law; yet this is not without exception.

For

For if a man drive Beasts along the High-way, and the Beasts run into any Man's Corn or Grass, and he that driveth them goeth after them into the Grounds to fetch them out, he may justifie that entry into the Grounds to fetch them out. Dr. and St. l. 1. c. 10.

If a man make a Feoffment, and that in Fee by Indenture, reserving a Rent, he cannot distreyn for that Rent unless a distress be expresly reserved; And if the Feoffment be made without an Indenture reserving Rent, that reservation is void in the Law. And the like Law is, where a gift in Tail, or a Lease for term of life is made, the remainder over in Fee reserving a Rent, that reservation is void in the Law. Dr. & St. l. 2. c. 9.

Also if a man seised of Land for term of life granteth away his whole Estate reserving a Rent, that reservation is void in the Law, without it be by Indenture: and if it be by Indenture, he shall not distreyn for the Rent, without a clause of distress be reserved. Ibid.

Also for Amerciaments in a *Leet*, the Lord may distreyn, although it be Ibid.

in the High-way; but for Amerciaments in a Court-Baron, he cannot diſtreyn; neither can he deſtreyn for an Amerciament in the *Leet*, in a place ſeiſed into the Kings hands for the Kings Debt.

Ibid. Alſo if a man make a Leaſe at *Michaelmas*, for a year, reſerving a Rent payable at the Feaſts of the Annunciation of our *Lady*, and St. *Michael* the Arch-Angel; in this caſe he may diſtreyn for the Rent due at our *Lady-day*, but not for the Rent due at *Michaelmas*, becauſe the time is expired.

But if a man make a Leaſe at the Feaſt of *Chriſtmas*, for to endure to the Feaſt of *Chriſtmas* next following, *viz.* for a year, reſerving a Rent at the aforeſaid Feaſts of our *Lady-day* and *Michaelmas*; In this caſe he ſhall diſtreyn for both the Rents as long as the term continues, that is to ſay, till the aforeſaid Feaſt of *Chriſtmas*.

Dr. & St. ibid. And if a man have Lands for term of life of *J. N.* and makes a Leaſe for terms of years, reſerving a Rent, the Rent is behind, and *J. N.* dyeth; there he ſhall not diſtreyn, be-

becauſe his reverſion is determined.

And if a Town or Pariſh be Amerced, and the Neighbours by Aſſent, Aſſeſs a certain Sum upon every Inhabitant; And agree, that if it be not paid by ſuch a day, that certain perſons thereunto aſſign'd ſhall diſtreyn; in this caſe the diſtreſs is lawfull.

If there be Lord and Tenant, and if the Tenant do hold of the Lord by Fealty and Rent, and the Lord doth grant away the Fealty, and reſerve the Rent, and the Tenant Attorneth; In this caſe he that was Lord may not diſtreyn for the Rent, for it is become a Rent-Seck. *Ibid.*

But if a man make a Gift in Tail to another, reſerving Fealty and certain Rent, and after that he granteth away the Fealty, reſerving the Rent and the Reverſion to himſelf; in this caſe he ſhall diſtreyn for the Rent, for the grant of the Fealty is void; for the Fealty cannot be ſevered from the reverſion.

Alſo

Dr. & St. ibid. f. 75.

Also for Heriot-service the Lord may distreyn, but for Heriot-custom he cannot distreyn, but may Seise.

Also if a Rent be assigned to make a partition or assignment of Dower Egal, he or she to whom that Rent is assigned may distreyn. And in all these cases aforesaid, where a man may distreyn, he may not distreyn in the night; but for *damage feasant*, that is, where he finds Beasts doing hurt in his ground, he may distreyn them night or day when he finds them, but for Waste, Reparations, Accompts, or for Debts upon Contracts, or such like; no man can lawfully distreyn.

CHAP.

CHAP. V.

Of Reſcous, in what caſes it may be Lawful: of Replevins, how they are to be ſued out; and of Avowries to Declarations upon Replevins.

THE word or term *Reſcous* is derived from an old *Norman* verb *Reſcourrer*, which is in the Latin *recuperare*, that is, to take from, to get again, or recover; So that *Reſcue* is as much as to ſay, to recover or get again what another hath taken away. Cook 2 par. Inſt. 160.

And in the ſence of the Law *Reſcous* is a taking away and ſetting again at Liberty goods diſtreyned, or the body of a Perſon Arreſted, and in an Officers cuſtody by vertue of legal proceſs.

Such kinds of *Reſcous* as appertain unto our preſent ſubject are of diſtreſſes taken, in what caſes it may be juſtifible to *Reſcue* Goods

or

or Cattel distreyned, and where not.

Co. l. 4. f. 11. If a Landlord distreyn when there is no Rent due, the Tenant may make a *Rescue*, and hinder that distress.

1. Par. Inst. f. 160. In like manner if a Landlord come to distreyn, and the Tenant tender his Rent unto him, and the Lord will distreyn notwithstanding; in this case the Tenant may make *Rescous*.

Cook ibid. Magna Charta. f. 25. If Rent be in Arrear, and the Lord distreyn the Tenants Cattel in the High-way within his Fee; here also the Tenant may *Rescue* them, for no man may distreyn in the High-way, but the King and his Officers by special Authority.

Ibid. f. 122. In like manner, if a Landlord distreyn *Averia carucæ*, goods of the Plough, where there is a sufficient distress to be taken besides; or if the Lord distreyn any thing that is not distreynable by common Law or Statute: in this case it is lawful for the Tenant to make *Rescue*.

Rastal tit. distress. 10.

Hughs. gr. abr. 1. part. f. 117. C. 2. But if a Lord come to distreyn Cattel which he seeth within his Fee, and the Tenant or any others

to

to prevent the diſtreſs drive the Cattel away out of the Fee, the Lord may follow them with freſh Suit and diſtreyn the Cattel, and the Tenant cannot juſtifie a *Reſcous* of them, becauſe in the judgment of the Law the diſtreſs is taken within his Fee.

But if the Lord be coming to diſtreyn, and have not ſight of the Cattel within his Fee, though the Tenant drive them off on purpoſe, or if the Cattel after the view go out of the Fee of their own accord, or if the Tenant after the view removeth them for any other cauſe than to prevent the diſtreſs; then if the Lord diſtreyn them out of his Fee, the Tenant may juſtifie a *Reſcue*. Co. 1. par. Inſt. fol. 161.

If a man come to diſtreyn Cattel *damage feaſant*, and ſee the Beaſts in his Ground, and the owner of the Cattel drives them out before the diſtreſs taken; the owner of the Ground cannot follow and take them; for if he do, the owner of the Cattel may *Reſcue* them, for they muſt be *damage feaſant*; that is, doing hurt at the time of the diſtreſs Cook, ibid.

distreſs taken; and the owner of the ground may bring his action of treſpaſs.

Cook Ibid. The Lord cannot break open any Gate that is locked, nor break open any Incloſure to take a diſtreſs; So that if a Tenant lock up his Gates, and incloſe his Ground, ſo that the Lord cannot come to diſtreyn: if the Rent be behind, and the Lord have had actual poſſeſſion, this is a diſſeiſin.

Replevin. For the eaſe and ſpeedy remedy of the Country in caſe of diſtreſſes, where the Cattel be pounded, the Statute hath provided, that every Sheriff, at his firſt County day, or within two months after he firſt receives his Patent, is to depute and proclaim in his Shire-Town four Deputies to make Replevins within his Country, which muſt reſide within twelve miles one of another, on pain of five pounds a month for every month they are wanting.

So that when any mans goods are diſtreyned or impounded, he may repair to one of the Sheriffs Deputies for that purpoſe; and there he may have a Replevin (upon *Plegii de Retorn.*

Retorn. habendum fi, &c.) to cause the goods distreyned to be delivered to the owner.

There is likewise a Writ *de Replegiari facias* at the common Law, wherby the Sheriff is commanded, taking pledges of Prosecuting, to redeliver the goods distreyned to the owner: but since the other is the readier and easier way, this Writ is out of fashion.

In a Replevin, he whose goods are distreyned or impounded becomes the Plantiff, and declares against the other for unjustly taking and detaining his Goods or Cattel *contra vad. & pleg*, &c.

If a Landlord distreyn, and carry the distress to hold, or out of the County, so that the Sheriff upon a *Replevin* cannot redeliver the goods, then upon the Sheriffs return of the *Replevin*, may have a Writ of *Withernam* directed to the Sheriff, to take as many of the Lords Beasts, or as much goods in his keeping, till he have made deliverance of the first distress; and if the Goods or Cattel be conveyed to a Fort or Castle, the Sheriff may command the

Rastal. tit. distresses. 7.

the power of the County, and beat it down.

If a distress be made in a Franchise or Bailiwick, the Sheriff is to direct his Repleuin to the Bailiff thereof to deliver them upon Pledges, *&c.*

Property. The Plaintiff in the Replevin ought to have the property of the goods in him at the time of the distress made; for if the Defendant claim property, the Sheriff cannot Replevie the distress, but the property must be tryed by Writ.

Co. 1. par. Inst. f. 145. So that if the defendant claim property in the goods distreyned, then must the Plaintiff in the Replevin have a Writ *de Praprietate probanda*, directed to the Sheriff to try the property; and if the Jury find for the Plaintiff, then the Sheriff must make deliverance of the distress: and if it pass for the defendant, the Sheriff can proceed no further unless the Plaintiff bring Writ of *Replegiari facia* directed to the Sheriff, and then, though he do return the property, yet it shall proceed to tryal in the Common-Pleas upon the issue of the property.

The

The defendant in a Replevin; that is, he that made the distress, may if he see cause bring a Writ of *Recordare*, and so remove the plaint upon the Replevin, out of Sheriffs County-Court into the Common-Pleas; and if the Plaintiff declare not, he may have a *Retorn. habend.* And then if he declare not, a Writ to enquire of damages.

If a man by his Deed grant a Rent with a clause of distress, and grant further that he shall keep the goods distreyned against sureties and pledges, till the Rent be paid, this grant is not good, but the Sheriff may Replevie the goods distreyned notwithstanding: for if such a distress should be irrepleviable, the currant of Replevins should be stopped, to the great damage of the Subject.

If the Goods or Cattel of several men be distreined, they cannot joyn in a Replevin, but every man must have a several Replevin: for in a Replevin it is a good Plea to say, the property is to the Plaintiff and to a Stranger; and where there be two Plaintiffs, that the property is to one of them. Co. 1. par. Inst. f. 145.

If

If a Lord distreyn his Tenant wrongfully, although the Cattel be come back again to the owner; yet the Tenant may have a *Replevin* against the Lord, because he cannot have an action of trespass against him.

The Plaintiff in a *Replevin* ought to be careful in giving his instructions for it, for it must be certain in setting down the number and kinds of the Cattel which are distreyned, otherwise the *Replevin* is not good.

Avowry. The *Avowant* is the defendant in a *Replevin*; that is, he that made the distress; and when he justifies in his Plea for what cause he distreyned, that Plea is called his *Avowry*.

As if a Landlord distreyns for Rent in Arrear, and the Tenant or owner of the Cattel brings a *Replevin*, and declares against him for unjustly taking and detaining his Cattel, and the Defendant justifies he took it in his own right, and so shewing the cause of the taking in his Plea: this is an *Avowry*.

But if the Defendant took the distress for or in the right of another, then when he hath shewed the cause in

in his Plea, he must make *Cognisance* or acknowledgement of the taking the distress, as being Bailiff or servant unto him in whose right he took it.

There are four manner of Avowries which a Lord may make upon a Replevin.

1. Avowry upon his very Tenant, Co.l.9.f. 135.136.

2. Upon his very Tenant by the Manner where the Tenant had but a particular estate:

3. Upon his Tenant by the Manner where the Lord had but a particular estate: and these three are Avowries at the common Law.

4. The Lord may Avow upon the matter in the Land as within his Fee: this is provided by the Statute 21.H.8.C.19. and is the safest way for the benefit of the Lords; for by this Statute, a Lord may Avow the taking a distress, as in Lands holden of him within his Fee, without naming of any Person in certain; which by the Common Law they could not do, but were thereby compelled to Avow upon a Person in certain, which often proved much to their damage and prejudice: for by the secret Fines, Recoveries, Grants, and 21 H.8. C. 19.

and Conveyances, which the Tenants uſed purpoſely to frame to defraud their Lords, they were ignorant upon whom to make their legal Avowry; which inconveniencies the forementioned Statute hath prevented.

Now in an Avowry upon this Statute, the Plaintiff in the Replevin, be he Tenant for years or otherwiſe, may have every ſufficient anſwer and aid, and every other advantage in the Law to the Avowry; Diſclaims only excepted; for becauſe the Avowry is made upon no certain perſon, he cannot diſclaim.

Co. 11. 2. par. Inſt. f 226. If a Tenant hath Rent behind for divers years, and makes a Feoffment in Fee, and the Lord accept the Rent or Service of the Feoffee due in his time, he ſhall looſe the Arrerages of his Rent due in the time of the Feoffor. For after ſuch acceptance, the Lord cannot avow upon the Feoffer, nor upon the Feoffee, for the Arrerages due in the time of the Feoffor; but if the Feoffer dyeth, although the Lord accept the Rent or Service by the hands of the Feoffee due in his time, yet he ſhall not looſe

loose the Arrerages, because he is now by the Law compelled to Avow upon the Feoffee; and what the Law enjoyns him to, shall not be prejudicial unto him.

If the Plaintiff in a Replevin be non-suit, or otherwise by Avowry barred or overthrown; then the Defendant or Avowant shall recover costs and damages against the Plaintiff, as the Plaintiff should have done or had, if he had recovered in the Replevin against the Avowant.

CHAP.

CHAP. VI.

In what cases a Tenant or other shall be said to commit waste in Houses, Gardens, Woods, Pastures, Orchards, &c. and what Waste shall be punishable, and what not.

IT concerns every Tenant, of what nature soever his Tenure be, to be very careful herein: for he may in committing Waste soon become obnoxious to the Law, and incurr great damage.

I shall therefore by way of caution shew you in what cases a Tenant may commit Waste, so as to render himself lyable to loss and punishment; and then how far a Tenant may act upon his Tenure, and not commit any punishable Waste.

Cook. 1. par. Inst. f. 53. If a Tenant for life or years, or in Dower, do pull down any of the Houses or Tenements, or suffer them to be uncovered, to the rotting or destroying of the Timber or Materials

rials of the House, this is Waste.

So likewise if Glass-windows be broken down or carried away it is Waste, though the Tenant glazed them himself: for the Glass is part of the House. It is also Waste to take away Wainscot, if it be fixed to the Walls or Posts of the House.

It is likewise Waste to take away Doors or Windows, or any thing annexed or fixed to the Free-hold, although the Tenant fixed them there himself.

If a Tenant build a new House where none was before, it is Waste: and if he suffer it to be wasted, it is a new Waste.

The pulling down of a Stone-Wall, or Mud-Wall of a House is Waste. Cook. Ibid.

If a Tenant of a Park, Warren, Dove-house, or the like, do not leave such sufficient store as he found when he entred, it is Waste; and so is to suffer a Park-pale to decay, whereby the Deer are lost or dispersed.

If a Tenant suffer the Houses to be wasted, and then Fell Timber Co. 1. par. Inst. f. 53.

her to repair them, this is a doubl
Waſte.

Waſte is properly in Houſes, Gar
dens, and Timber-trees; that is, Oa
Aſh and Elme, which are counte
Timber generally in all places, ex
cept in ſome Copy-holds Elme
not.

Now theſe Timber-trees are ſai
to be waſted either by cutting the
down, lopping or topping them,
any other ways decaying the Tim
ber.

Idem. And in ſome Countries whe
Timber is ſcarce, Beech is accoun
ed Timber, or other Trees uſed f
building Houſes; and there the cu
ting of them is Waſte.

Or if a Tenant ſuffer the youn
Germens of Trees to de deſtroye
this is deſtruction, and puniſhable
Waſte.

To cut down any Trees, as Wi
lows, Birch, or the like, which ſta
and grow in the defence and wit
in view of the dwelling Houſe,
Waſte.

It is a Waſte to cut down Hazl
which grow not under the gre
Trees, but in a quarter of the Woo
by themſelves.

If a Tenant grub up or deſtroy a quick fence of white-thorn, it is waſt Co. 1 par. Inſt. f. 53.

Burning of a houſe by negligence or Miſchance is Waſt.

Where is a Wood, and nothing growing there but underwood, the Tenant cannot cut all: but if it be a Wood where great Trees grow amongſt the underwood, there he may cut all the underwood.

It is Waſt to cut apple-trees, if they bear fruit, though they lye along the ground.

It is alſo Waſt to cut Damſin-trees or any fruit-trees growing in a garden or orchard.

To dig for Gravel, Chaulk, Clay, Brick, Earth or Stones, or the like, is Waſt; and ſo it is if a Tenant dig for any Mynes which were not open at the time of the Leaſe made.

To ſuffer a bank or Wall of the Sea to be in decay, ſo that by the Flux and Reflux of Sea, the Marſh is overflown, ſo that it becomes unprofitable, is Waſt.

But if the Sea break in ſuddenly by a violent tempeſt, it is no Waſt.

It is Waſt alſo if a Tenant ſuffer the banks of any River or Water to decay, whereby the ground is ſur-

rounded, or becomes unprofitable; ſo it is to ſuffer paſture-ground to be ſurrounded ſo as it becomes Ruſhy; or Arable land, ſo that it becomes tough clay.

It is waſte for any Tenant to convert Arable into Wood, or Meadow into Arable.

The puniſhment in Waſt is treble damages, and forfeiture of the place Waſted.

There is voluntary or actual Waſt, and permiſſive Waſt.

An action of Waſt lyeth againſt a Tenant by the courteſie, Tenant for life or years, half a year, or Tenant in Dower, by him that hath the eſtate of Inheritance, in any of all theſe caſes before mentioned.

But Waſt doth not lye againſt a Guardian in Soccage, but an Action of Accompt or Treſpaſs.

Neither doth Waſt lye againſt a Tenant by *Elegit*, Statute Merchant or the Staple; but an Action of Accompt after the Debt and damages levyed.

Co. 1 par. Inſt. 54. Waſte doth not lye againſt a Tenant at will: but if ſuch Tenant voluntarily pull down houſes, or cut down

down Timber-trees or the like; in this case the Lord may have an action of trespass against him.

But against a Tenant in Mortgage, either an Action of Wast or an accompt will lye against him, because his estate is conditional. Noy. Max. p. 33.

If two or more Joynt-Tenants, or Tenants in common, be in a house, and one will repair the house, and the other will not; in that case he that will repair it, may have a writ *de Reparatione faciend.*

If a Landlord covenant to repair the house, and doth it not, in this case the Lessee may cut timber growing upon the ground and repair it, though he be not compellable thereunto, and shall not be punishable in Wast for so doing.

No man can have an action of Wast unless he have the immediate estate of inheritance; but sometime another shall joyn with him. Cook. 1. part. Inst. p. 53.

As if a Reversion be granted to two, and the Heirs of the one, they two shall joyn in an action of wast.

In like manner the Surviving *Co partners* and the Tenant by the courtesie shall joyn in an action of waste.

If a Tenant for years commit Waſt and dye, no Action of Waſte lyeth againſt his Executors or Adminiſtrators for waſte done before their time.

Kitchin f. 244. If there be two *Copartners* of a Reverſion, and one of them dye, the Aunt and Neece ſhall joyn in an Action of waſte.

If a Tenant for life commit waſt, and after ſurrender his Eſtate, and the Leſſor accepts it; the Leſſee is then diſcharged of the waſt.

If a ſtranger commit Waſte upon the lands which one holdeth for life or years, the Tenant ſhall ſuffer for it, and is left to take his remedy over againſt he that did it.

If a Landlord covenant to deliver timber out of the ſame land to repair the houſe let, and will not deliver it, and for defect thereof the Tenant will not repair it, but ſuffers the houſe to fall down; this is waſt in the Tenant, and he is puniſhable for it.

But if the timber be to be taken out of other lands, and be not delivered, then the Tenant is excuſable if he ſuffer the houſe to fall, and no

action of waste lies against him.

If a single woman Rent lands and marries, and her husband commits waste and dyes, she shall be punished for this waste done by her husband. Idem.

But if a Lease be made to a man and his wife, and her husband commits waste and dyes; in this case the wife shall not be punished for such waste, unless she agree to the estate.

If a woman be Tenant for her life, and marries, and her husband commit waste, and the wife dyeth, the man is not punishable for this wast: but if a woman be possessed of a term of years, and takes a husband who commits waste, and the wife dyes; here the man is liable to an action of waste for the waste by him committed, because he enjoyeth the term of the Leafe. Cook. 1 part. Inst. 54.

If a man make a Leafe for life, or years, and after grants the Reversion, for years, the Lessor shall have no action of waste during the years; for he himself hath granted away the Reversion, in respect whereof he is to maintain his action.

If an action of waste be brought,

and the Term end while it is depending, yet the writ shall not abate: for although the Plaintiffe cannot recover the place wasted, yet he shall recover the treble damages.

Co. 1. part. Inst. f. 285. Likewise if one be Tenant for term of anothers life, and makes waste, and afterwards the *Cestui que vie* dyes, here the Lessor shall recover treble damages, but cannot recover the place wasted, for that falls to him by the death of the *Cestui que vie.*

Cook. 1 part. Inst. f. 54. If waste be done in one corner of a Wood, that place only which is wasted shall be recovered: but if it be done here and there about the wood, then the whole wood shall be recovered, or as much wherein the waste *sparsim* is done.

Idem. And so in Houses, so many Rooms shall be recovered wherein there is waste done.

Regist. pract p. 343. If a man make waste in cutting trees which grow in hedge-rows, which inclose pastures, nothing shall be recovered but the place wasted, that is, the circuit of the roots, and not the whole pasture; but if trees grow scatteringly about the pasture,

then

then the whole pasture is forfeited if they be cut.

It is good plea in bar to a writ of Waste, to say, that the house fell by a sudden tempest, although the Tenant did covenant to repair it, but it is no plea in an Action of covenant.

It is also a good plea in a writ of Waste, to say, that the house was Ruinous at the time of the Lease making, and the Timber so putrified and Rotten that it fell.

It is also a good plea to say, that the Plaintiffe hath entred upon the Land, before which entry no waste was made; or that he Surrendred, and the Plaintiff did accept before which time no Waste was made.

If a Tenant doth waste, and afterward Surrenders, and the Lessor agrees, yet the Lessor may have an action of wast, and recover treble damages. Cook. 1 part. Inst. f. 285.

If an action of wast be brought by husband and wife in remainder in special tail, and the wife dyeth (the suit depending) without issue; in this case, the writ of waste shall abate.

Idem. f. 220. If a Leaſe be made to hold to one without any impeachment of waſte, then the tenant may cut down trees, and convert them to his own uſe; but if the words be to hold without impeachment for any action of waſt: in this caſe if the Leſſee cut down trees, the Leſſor ſhall have them.

Cook. 1. part Inſt. 233. 234. If a Tenant for life grant a rent-charge, and after doth waſte, and the Leſſor recover in an action of waſte, he ſhall hold the land charged during the life of the Tenant for life, but if the rent were granted after the waſt done, the Leſſor ſhall then avoid the grant made by the Leſſee for life.

Idem F. 345. If a Tenant in Fee releaſe to his Tenant for life all his right, yet he ſhall have an action of waſte.

And if a Tenant in Tail make a Leaſe for his own life, yet he ſhall have an action of waſt.

But if there be a Tenant for life, the remainder to another in Tail, and he in the remainder releaſe to the Tenant for life all his right and State in the land; he cannot afterwards have an action for waſte.

If the Grantee of a Reverſion bring

bring an action of waſte, the Leſſee may plead generally, that he hath nothing in the reverſion.

If a Leſſee before his term begin enter into the lands let to him, and do an act which amounteth unto waſte, the Leſſor ſhall not have an action of waſte for the ſame.

None ſhall have judgement to recover in an action of waſte, where the waſt comes but to 12 *d.* or ſuch a ſmall ſum.

If waſte be done upon lands let for term of years, or life, by one, againſt whom the Leſſee can have no remedy in Law for committing the ſame waſte, the Leſſee in ſuch caſe is not puniſhable for the ſame by the Leſſor, except there be a ſpecial covenant in the Leaſe, that he ſhall not permit nor ſuffer waſte to be done. Cook. 2 part Inſt. f. 303.

If the houſe be uncovered when the Tenant cometh in, it is no waſte to the Tenant, if he ſuffer it to fall down.

The raiſing of a new frame of a houſe which was neuer covered, is no waſte. If a houſe fall by ſudden tempeſt, or be burnt by lightning, or deſtroyed by Enemies, or the like,

without any default of the Tenant, or was Ruinous at his coming in, and fall down; this is no waſt.

And the Tenant may build the ſame again with ſuch materials as remain, and with other Timber growing upon the ground; but he muſt not make the houſe any larger then it was, for if he do, it is waſte.

If a Tenant fix a Furnace, and not to the Walls nor Poſts of the Houſe, if he take it away within his term, it is no waſte.

If a Tenant in Fee fix a Furnace in the middle of the houſe, the heir ſhal have it and not the Executors.

If a Houſe fall by a great wind or tempeſt, the Leſſor ſhall have the Timber, for it is no waſte, and the Leſſee is not bound to build it up again.

CHAP.

CHAP. VII.

The Tenants Law, touching Mens Buildings in the City of London, *For prevention of Suits between Landlords, Tenants, and under-Tenants in the City of* London, *whose Houses were destroyed by the dismal Fire which happened the* 3. Sept. 1666. *For the speedy Rebuilding the City, and preventing differences, it is enacted:* 19 Car. 2.

THat the Justices of the *Kings-Bench* and *Common-Pleas*, and Barons of the *Exchequer*, being of the degree of the Coife, or any three or more of them, to hear and determine all differences which may arise between Landlords, Proprietors, Tenants, Lessees, Under-Tenants, or late occupiers of any Houses, Courts, Yards, Grounds, Wharfs, or *A Court of Judicature for Rebuilding the City.*

or of any claiming any Estate, or Title in or to the same their Heirs, &c.

And to defalk, apportion or abate Rent or Rents, and to limit and prefix or limit time for Rebuilding, and to proceed from time to time, and at such place or places as any three or more of them shall think fit; *Sine forma et figura Judicii*, and to enquire by Jurors Verdict, Witnesses upon Oath, Examinations of parties interessed, or otherwise to hear and determine all differences between the parties interessed concerning the premises.

Rot. 7. 8. That the definitive order of the said Justices and Barons, or any three of them shall be final, No Writ of Error or Certiorary shall be for reversal or removal of the same.

The said Judges, or any three, or more of them, have power to order the surrendring, Abridging, Leasing, Determining or Charging of any Estates in the premises; to add longer time to Leases not exceeding forty years, at such Rent and Fine, or without, as they shall think fit.

Upon the Petition of any person con-

concerned; The said Judges shall issue out Notes or Warrants, under the hands of any three of them, to warn the persons therein named, to appear before them, at such time and place as such Note shall specifie. And upon *non*-appearance, Oath being made of the service, the said Justices and Barons, or any three of them, to proceed to definitive Order.

Enacted, That the said Justices and Barons or any three of them, shall be a court of Record, and shall cause all Judgments and Determinations to be Recorded in a Book of Parchment; and that every Judgement be signed by three of the said Justices and Barons, and to be kept amongst the Records of the City. Fol. 80.

The said Justices and Barons are to order a Table of Fees for the Officers to be imployed in the said Court.

Where any Order is made by a lesser number than seven of the said Justices and Barons; than any Person grieved by such order, may put in Exceptions in seven days to the

the chief Justices and chief Barron or any two of them, who are to acquaint the rest therewith, and to hear the Parties, and consider the said Exceptions: and if seven or more subscribe that they find cause, then any seven or more of the said Justices and Barons shall within twenty days after the Exceptions delivered, review the former order, And to reverse, confirm, enlarge or diminish the same as they shall think fit.

This Act to continue in force till the last of *December*, 1668. and no longer.

19 Car. 2. R. fol. 84. 85.

Enacted, That the Lord-Mayor, Aldermen, and Common-Counsel, shall nominate Surveyers or Supervisors to see the Rules touching the New building of the City observed; If any one build contrary to the Rules hereafter mentioned, the same to be deemed a Nusance, and the builder to enter into Recognizance before the Mayor and Justices, to abate, demolish or amend the same, according to the Rules and Orders; and if the Offender refuses, he shall be committed to the common Gaol

The buildings to be surveyed.

of

of the City, without Bayl or Main-prize; there to remain till he shall have abated, demolished, or amended the same; or else such irregular Buildings may be demolished by order of the Court of Aldermen.

The Surveyers to take an Oath for the impartial execution of their Office. Fol. 88.

There shall be only Four sorts of Buildings and no more. Idem.

Four sorts of Buildings.

The least sort in By-Lanes.

The second sort in Streets and Lanes of Note.

The third sort of Houses Fronting the principal Streets.

The fourth sort of Houses for Persons of extraordinary quality, not fronting either of the three former ways; the Roofs of the three first sort of Houses to be uniform.

The Lord-Mayor, Aldermen, and Gommon-Counsel, shall declare which shall be accompted By-Lanes; which Streets or Lanes of note; and which High and Principal Streets. Idem.

All the Streets and Lanes intended

to be rebuilt, shall be Marked and Staked out, by order of the Lord-Mayor, Aldermen, and Common-Council, that the breadth, length, and extent thereof may be known and observed.

Streets and Lanes to be staked out.

Penalty for pulling up any Stake or Mark.

None shall wilfully pull up, or remove any Stake or Mark-Stone, on pain of ten pounds, to the use of the City, or three Months imprisonment without Bayle or Mainprize; or if the Offender be not able to satisfie such Penalty, then the Justices may by order under his or their Hands and Seals, cause such Offender to be whipped near the place where the offence shall be committed, till his body be bloody: And it shall be lawful for the said Justice or Justices to reward the informer out of the penalty not exceeding a third part thereof.

Vol. 88.

Enacted, That the out-side of all Buildings in and about the City, be made of Brick or Stone; or Brick and Stone together; except Door-cases and Window-frames, the Breast, Summers, and other parts of the first Story to the Front between the peers, to be of Oken-timber. The said Doors, breast, Summers and Win-

dow-

dow-Frames to be discharged of the burthen of the Fabrick by Arch-work of Brick or Stone.

Enacted, That the Supervisors take care, that there be party-walls, and party-peers, set out equally on each Builders ground, to be built up by the first Builder, and that there be touching left in the Front-wall by the first Builder, for the better Joyning of the next House to the same. *Vol. 85. Surveyors to see there be party-Walls.*

That no man be permitted to build on the said party-wall, or on his own ground, till he hath re-imbursed the first Builder the full moyety of the said party-Wall and Peers, with Interest for the forbearance of the same, after the rate of six pounds *per cent. per annum.* to be accounted from the beginning of the said first building.

If any difference arise concerning the true value of the said charge; the same to be referred to the Alderman of that Ward, and his Deputy.

And where the said Alderman and his Deputy, or one of them shall be parties, or cannot compose such difference, The Lord Mayor and Court of Aldermen, to examine, hear, and determine

termine the same, from whence there shall be no appeal.

Fol. 90. *The Assize of Buildings.*

The first and least sorts of Houses shall be two Stories high, besides Cellars and Garrets; the Cellars thereof to be six Foot and an half high, if Water hinder not.

The first and second Story to be nine foot high from the Floor to the Cieling; All Walls in Front, and Rear of the first Story, to be of the length of two Bricks thick; and thence upwards to the Garrets, one Brick and an half; the back part of the Garret Walls not to be less in thickness, than the length of one Brick.

And that the thickness of the party-Walls between these Houses, be of one Brick and an half, as high as the Garrets; and the thickness of the Party-Wall in the Garrets be one Brick in length, and the Timber and Stone to be of the Assize set down in the Table.

Assize of the second sort of Building.

The Houses of the second sort of building, shall be three Stories high, besides Cellars and Garrets; And the Cellars to be six Foot and an half high, (if Water hinder not;)

The

The first and second Stories to be ten Foot high, from the Floor to the Cieling; the third nine Foot; the Walls of the first Story to be of the thickness of two Bricks length and an half, and upwards to the Garret one Brick and a half; the thickness of the Party-walls to be two Bricks length; the first Story and thence upward, one Brick and an half; the Timber and Stone as is prescribed in the Table.

Third sort of Building.

The Houses of the third sort of building to be four Stories high, besides Cellars and Garrets: The first Story to be ten Foot high; the second ten Foot and an half; the third nine Foot; the fourth eight Foot and an half.

All the Walls of the first Story to be the thickness of the length of two Bricks and an half; and upwards to the Garret Floore one Brick and an half; the thickness of the Party-walls two Bricks length as high as the first Story, and to the Garret Floor one Brick and an half; Timber and Stone as in the Table.

Fourth sort of Houses.

Mansion Houses being the biggest and fourth sort of building; not fron-

fol. 39. fronting Streets or Lanes, to keep the Assize set down in the Table, the Number of Stories and height to be at the Builders discretion, so it exceed not four Stories.

Balconies and Penthouses. In all high Streets to be Balconies four foot broad, with rayles and barrs of Iron to stand equally in distance from the ground; and the vacancy of the Front to be supplyed with a Penthouse, of the breadth of the Balcony, to be covered with Lead, Slate, or Tile, and Cieled underneath. The water to be conveyed into the Channels by party-Pipes, and the Pavements under the Balconies and Penthouses to be made of flat stone.

Cellar Floores. No first Floore in any high Street be laid above 18 inches above the Street, nor under six.

No Trap-door, nor open grates to be made into any Cellar, without the Foundation, but all lights be made upright.

That there be no Bulks, Jetties, Posts, &c. beyond the Ancient Foundation in any Street or Lane, saving only in the high Streets, the Stallboards when the Shop-windows are open

open may turn over eleven inches and no more into the Streets.

All persons seised in any ground formerly builded upon, shall build the same in three years; in default thereof, Proclamation to be made by act of Common Council upon the ground, and at the Exchange between twelve and two of the Clock, that the persons concerned, rebuild within nine moneths next ensuing; and in refusal or neglect of rebuilding, the Mayor and Court of Aldermen to issue out Warrants to the Sheriffs, to Impannel a Jury to inquire of the value of the ground. *Limitation for Building.*

After the inquiry and value, the said ground to be sold under the Common Seal of the City, and the money to be paid into the Chamber of *London*, and to be paid out by the Chamberlain to the persons Interested therein.

The said Sales to be inrolled upon Record in the said City, and shall finally barr all persons, their Heirs, and Assigns, to claim any Estate out of the ground so sold, and the Purchaser freed and discharged from all Incombrances precedent the said sale.

The

Wages of Work-men and prices of Materials.

The Justices of the Kings Bench, or any two or more of them, may call before them Brick-makers, Tile-makers, and Lime-burners, that make or burn Brick, Tile, or Lime, within five miles of the Thames, and confer with them if they will be present, or in their absence, to Assesse reasonable prices upon Bricks, Tiles, and Lime, to be delivered at the Kilns; and of the Carriage of the same materials both by Land and Water.

The said Justices of the Kings Bench, or any two or more of them, upon the complaint of the Lord Mayor and Court of Aldermen, may limit and rate the wages of Brick-makers, Tile-makers, Lime-burners, Carpenters, Brick-layers, Masons, Plaisterers, Joyners, Plummers, or other Artificer, work-man, or labourer.

The said Rates and Prices being so Assessed, shall be set down in a Table, and Proclamation thereof made by the Lord Mayor wich shall bind all persons concerned.

Penalty of Refusal.

If any one refuse to sell materials at the rate Assessed, or refuse to work

work for the wages Assessed, or
ave his work begun before itbe
inished, unless it be for non pay-
ment of wages; or if any one shall
irectly or indirectly Article or a-
ree for greater wages or prices
han shall be Assessed, and be there-
f convict by one witness before a
ustice, he shall suffer Imprisonment
ne month, or pay such Fine as the
ustice shall set upon him, not ex-
eeding ten pounds; out of which
ine the Justice is to satisfie the par-
injured, and pay the remainder to
e Chamberlain of *London*, for the
-edifying the publick buildings of
e City.

All Carpenters, Brick-layers, *Forreigners to work as well as Free-men.* f. l. 49.
asons, Plaisterers, Joyners, and
her Artificers, Work-men and
bourers, who are not Free-men,
all be set to work as well as Free-
en, and enjoy the same privi-
ges; and after they have wrought
ven years in their respective Arts,
y shall have liberty to work as
eemen of the said City, during
eir liues.

All differences touching Lights, *Lights and Water-courses.*
ater-courses or Gutters, shall be de-

determined by the Alderman of the Ward, and his Deputy where the difference is, if they be not parties concerned; but if they be concerned, or cannot determine the same, the Lord Mayor and Court of Aldermen, to do it without Appeal.

Sewers and Pavings.

The numbers and places for all Common Sewers, Draynes, and Vaults, and the pavings and pitching the Streets shall be set out by such persons as the Lord Mayor, Aldermen, and Common Council shall appoint under their Common Seal and they or any Seven of them with the Svrveyors or one of them, shall order and direct the making, altering, and cleansing of Vaults, Sinks and Sewers, and to impose a reasonable Tax upon all houses within the said City and Liberties towards the same, and to Levy the same by Distress in case of refusal.

fol. 101. No other Commissioners to intermeddle in the premises in seven years, and so long after, till the said Buildings be fully finished.

idem. The Lord Mayor, Aldermen, and

Noisome Trades Prohibited. Common Council, to prohibit such Trades to be used or exercised i

the high Streets, as they shall judge noysome or perillous in respect of Fine.

The Lord Mayor and Court of Aldermen, and Common-Council may remove any of the Conduits out of the High-Streets, and erect them in such other places as they shall think fit.

The Lord Mayor, Aldermen, and Commons may enlarge the Streets in such manner as there shall be cause by the approbation of his Majesty, and not otherwise; and may enlarge any passage which is less than fourteen foot in breadth. And to make a New Street from *Guild-Hall* to *Cheap-side*, of such bredth and wideness as they shall judge meet. *Streets to be enlarged, Fol. 102.*

The Lord Mayor, Aldermen, and Common-Council, to treat with the Owners of such ground as shall be taken away, or imployed as aforesaid; and in case of refusal or other impediment, to issue out Warrants to the Sheriffs, to return a Jury, to inquire of and assess Damages and Recompence to the owners of any such House, or Ground: And such Verdict and Judgement thereupon, *Satisfaction for Grounds taken away, Fol. 104.*

and the payment of the money so awarded to the owners, or tender, and refusal thereof, shall be binding against the said parties, their Heirs, Executors, Administrators and Assignes, and others claiming any title or interest in the said Houses or Ground; And be a full Authority for the Lord Mayor, &c. to convert the same to the purposes aforesaid.

Improvements, Fol. 106

In case of refusal or incapacity of any of the owners, or others interessed in the said Houses, to agree and compound with the Lord Mayor, Aldermen, and Commons for the same, A Jury shall be impanelled, to assess upon the parties interessed such sums of money, considering the improvement of their Houses as they shall judge fit in conscience and reason.

All sums of money so raised, to be paid to the City *Chamberlayn* who is enabled to recover the same by Action at Law, and his Receipt shall be a good discharge: Which money shall be imployed for satisfaction for such Houses and Ground as shall be converted into Streets, Markets, Passages, and other publick

lick places; and such satisfaction so given, or tendered, shall devest the propriety of the owners of such ground, and the same shall be hereby invested in the Lord Mayor, Commonalty and Citizens of *London*, and their Successors.

Where several persons claim several interests in any Ground to be sold by the Lord Mayor, and Aldermen by vertue of this Act, if any difference arise between the said persons so interessed, the Justices of the *Kings Bench*, and *Common-Pleas*, and Barons of the *Caif*, of the *Exchequer*, or three or more of them, are finally to determine the same, without formality of Proceedings, and to award such distribution of the money to the parties interessed, according to their respective Estates or Interests, as to them shall seem reasonable. According to which order and distribution, the said purchase-money shall be paid by the *Chamberlain* to the said several persons respectively.

Several Claims determinable by the Judges, &c.

The second day of *September* (unless it be Sunday) and if so, the next day following to be for ever observed as a yearly Fast.

An yearly Fast. Fol 108.

A Columne or Pillar of Brass or Stone to be erected on, or as neer as conveniently may, to the place where the Fire began, with an Inscription to be thereon, in perpetual Remembrance of the said dreadful Visitation.

Ensurance Office. All tenders of money, or payments which ought to be made in the late Ensurance Office, or in the Royal Exchange, may be made at the Ensurance Office in *Gresham-Colledge*, and be valid to all intents and purposes.

Churches, Fol. 109. The number of Churches to be rebuilt, shall not exceed 39. which are to be appointed by the Arch-Bishop of *Canterbury*, and Bishop of *London*.

The Scites, and Materials, and Yards of such Churches as shall not be rebuilt, are vested in the Lord Mayor, and Aldermen; and so much of the Ground as shall not be laid into the Streets, shall be sold; And the money to be imployed towards the rebuilding of such Churches as are intended to be built.

This Act shall not extend to St. *Pauls* Church, St. *Faiths* nor St. *Gregories* by St. *Paul's*, nor any of the Church-yards thereunto belonging.

Thames-

Thames-Street, and the Ground between the said Street and the *Thames*, shall be raised three foot higher than now it is. Thames-Street to be raised, fol. 110.

No house or other building (except Cranes and Sheds) shall be built within 40 foot of the *Thames*, from the Tower to the Temple; Nor any house or other building (Cranes only excepted) shall be built within 70 foot of the middle of any part of the Common Sewers called *Bridewell-Dock*, *Fleet-Ditch*, and *Turnmil-brook*, before the 24th. of *March*, 1668.

From the 24th of *June* 1667. to the 24th. of *June* 1677. All Coals brought into the River, to be sold by the Chaldron or Tun, shall pay 12 *d.* every Chaldron, and for every Tun 12 *d.* to be paid by the Master or owner of every Ship or Vessel to the Mayor and Commonalty, *&c.* or their Deputies or Assignes before the ship break bulk.

To prevent Fraud; The Coalmeeters shall deliver Certificates to the Officers or Assignes of the said Mayor and Comonalty, of the quantity of Coals delivered from on

Board any Vessel; if any be Concealed, there shall be paid 5. *s.* for every Chaldron or Tun so Concealed, unless the Importer within 24 hours after Certificate delivered in by the Coal-meeter, give in his Post Entry, and satisfie the duty for such surplusage.

The money raised upon this Imposition, shall first be disposed to satisfie such persons, whose Grounds shall be taken for the enlarging of the Streets and passages within the City; and the Residue shall be imployed for the making of Wharfs and Keys, and building of Prisons within the said City.

All money hereupon to be received, to be entred in a book or books of Vellam or Parchment, to be kept in the Chamber of *London*; where also shall be kept another book or books, wherein shall be entred the Accompts of all payments and disbursements, expressing the time when, the occasion for which, and the name of the person or persons to whom the same was disbursed.

All persons concerned to have free accesse to the said Books, when the Chamber-

Chamberlains Office is open, to view the same without paying any Fee.

The Chamberlain before the end of *Michaelmas* Term in every year, shall deliver upon Oath into the Receipt of the Exchequer, a true Copy of the said books, conteyning all the Receipts and disbursements of the preceding year, ending upon the 24th. of *June* next before; which is to be received *gratis*, and kept amongst the Records of the Exchequer, whether any person concerned may have access to view and peruse the said books without paying any Fee or Reward. *The Water-house.*

The Water-house adjoyning to *London-Bridge* may be rebuilt where formerly it stood.

The Lord Mayor and Aldermen may enlarge the passage called *Water-Lane*, from *Fleet-Street* to *White-Fryars-Dock* by the *Thames*, and to enlarge a passage to the said River, from *Cheapside* through *Soper-Lane*, to *Thames-Street*, and from the three Cranes to the *Thames*, and to enlarge another passage through *Mincing-Lane*, by St. *Dunstons* in the *East*, to *Thames-*

Street, near the *Custom-House*; and to make the said passages 24 foot in breadth; giving notice to the Proprietors before the last day of *May*, 1667. of their resolutions herein; and to give them satisfaction for their ground, according to the directions of this Act.

Assize of Timber and Stone for the First sort of Houses.

For the first Floor, Summers under 15. foot. 12. inches, and 8. Inches.
Wall Plates at 7. and 5 Inches.
Rafters under 15. foot, { at foot 8 / at top 5 } inches.
Single Rafters, 4 and 3 inches.

For the two other sorts of Houses.

Summers in length, foot.	foot. inches, thickness, inches.	inc depth, inches.
10 to 15	15---11-& 8.	
15 to 18	18---13---9	
18 to 21	21---14--10	
21 to 24	24---16-·12	
	26---17·-14	
Joysts which bear 10. foot	3	6
	3	7
	3	7
	3	8
	3	8

Prin-

	length		thickness
	Foot Foot	inches,	inch.
Principal Rafters from	15 to 18	at foot 9	—7
		at top 7	
	18——21	at foot 10	—8
		at top 8	
	21——24	at foot 12	—8½
		at top 9	
	24——26	at foot 13	—9
		at top 9	

Single Rafters not exceeding in length, fo. inc. inc. 9 -- 5 -- 4
not exceeding in bredth, 6 -- 4 -- 3½ thickness,

	Foot,	inches,	inches,
Single quarters in length	8	3½	1½
Double quarters,	8	4	3½

	F.	I.	I.
Sawed Joysts in length,	8	6	4
Laths in length 4 5		1½	1 quarter and half inch.

Assize

Assize of Stone

Inches,

First sort of Houses
- Corner Peers 18. Square
- Middle Peers 14. & 12.
- Double Peers 14. & 18.
- Door-Jambs 12. & 8.

Fo. Inch

Second and third sort of Houses
- Corner Peers 2. & 6. Sq.
- Middle Peers 18. Square
- Double Peers 24. & 18.
- Door-Jambs 14. & 10

No Timber to be laid within twelve Inches of the foreside of the Chimney-Jambs.

No Timber be laid within the Tunnel of any Chimney, upon pain of 10 *s.* to the Workman, and 10 *s.* every week it so continues.

Joysts and Rafters, not to be laid above twelve Inches distant. and quarters at above fourteen Inches distant.

No Joysts to bear at longer length than ten Foot; and single Rafters at nine Foot.

The Roofs, Window-frames and

nd Cellar-floors to be made of Oak.

Tile-pins to be made of Oak.

Summers and Girders to lye ten nches into the Wall; and Joysts ight Inches, and not to be laid over he Head of any Doors or Windows.

FINIS.

Books printed for, and sold by John Amery *at the* Peacock *near St.* Dunstan's *Church in Fleetstreet.*

COllection of Law-Entries, &c. by *William Rastal.* Printed 1670. fol. rice 3. l.

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